SUPREME COURT OF THE UNITED STATES.

No. 4

WALTER BRASHEAR, APPELLANT,

VERSUS

FRANCIS WEST ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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To Francis West and Henry Nixon, surviving executors, with Thomas Willing, who were executors of Henry Nixon.

Whereas an appeal has been prayed by Walter Brashear to the Supreme Court of the United States, at the city of Washington, the present seat of the National Government, to reverse a decree of the seventh circuit court of the United States in and for the Kentucky district, at the term, 182 , wherein the said Walter Brashear was complainant, and said Francis West, &c., defendants.

These, therefore, are to cite and command you that you be and appear in the Supreme Court, in Washington city, on the second Monday in January next, and then and there to be heard, if any thing you have to say, upon the said appeal.

Witness my hand as Judge of the district of Kentucky, and one of the Judges of the seventh circuit court of the United States, in and for the Kentucky district, this 5th day of November, 1828.

JOHN BOYLE.

Pleas before the Honorable Robert Trimble, one of the Judges of the seventh circuit court of the United States of America, in and for the district of Kentucky, held at the capitol in the town of Frankfort, at the May term of said court, in the year of our Lord one thousand eight hundred and twenty-five.

Be it remembered, that heretofore, to wit, on the 25th day of May, in the year 1815, came Walter Brashear into the clerk's office of the court aforesaid, and filed the following bill against Francis West, &c., to wit:

To the honorable the Judges of the circuit court of the United States for the seventh circuit, composed of the district and State of Kentucky, in chancery sitting:

Humbly complaining, sheweth unto your honors your orator Walter Brashear, a citizen of the State of Kentucky, that, some time about the day of your orator being then, as he has since continued to be, a citizen of the State of Kentucky, executed his bonds or notes in the city of Philadelphia, and State of Pennsylvania, to a certain Francis West, of said city, whom your orator prays may be made a defendant to this bill, for about the sum of seven thousand dollars, which said bonds or notes the said West afterwards assigned to a certain John Nixon, of said city, as security for some debts which he then owed to said Nixon: that said John Nixon afterwards departed this life, first appointing Thomas Willing and Henry Nixon, of said city, his executors, whom your orator prays may be also made defendants to this bill: that, about the time said West assigned the said bonds or notes to said John Nixon, said West conveyed all his estate, real and personal and mixed, to John Lapseley, Samuel Mifflin, and Henry Nixon, of said city, in trust for the payment of debts; that, some time after, about the day of 18 , your orator consigned his residence in Kentucky to a certain James Latimer, a merchant of said city, a considerable quantity of ginseng, and authorized him to make sale of the same, on the best possible terms, your orator intending to appropriate the proceeds of sale towards the payment of his debts in said city: that, some time after, about the day of March, 1809, the said Latimer sold said ginseng for about the sum of eleven thousand and five hundred dollars, the said Latimer holding at the same time in his hands the proceeds of another parcel of ginseng belonging to your orator, amounting to about the sum of four hundred and fifty dollars. Your orator further states, that, about the day of the said West received, on account of your orator, from a certain William Bush, of said city, one hundred and twenty dollars or thereabouts, which sum the said West has yet in his hands: that, some time about the day of 180 , your orator became special bail for said West in a suit brought by a certain George Anderson, (since dead,) of the town of Lexington, and State of Kentucky, in the Fayette circuit court of said State: that said Anderson prose-

cuted said suit to judgment; and afterwards, on said judgment, by virtue of scire facias, obtained judgment against your orator, and did actually issue an execution thereon, when your orator, to save his property from an exposure and sacrifice at public sale, settled the same with said Anderson on the 28th day of October, 1810, amounting, with interest and costs of suit, to the sum of three thousand and seventy-seven dollars and thirty-three cents, as will more fully appear by said Anderson's receipt, herewith filed, and prayed to be referred to. Your orator states, that, notwithstanding the said executors of John Nixon aforesaid well knew that when your orator executed the bonds and notes first herein before mentioned, your orator resided in Kentucky, and that their testator and said West had perfect knowledge of the same, yet said executors nevertheless proceeded to sue out one or more attachments, in one of the courts holden in said city of Philadelphia, against the said Latimer and your orator, to subject the funds in said Latimer's hands belonging to your orator to the payment of the said bonds or notes, whereby the said funds were not only tied up in the hands of said Latimer, was forbid by the operation of the law, or by the order of the court from which the attachments emanated, to pay the same or any part thereof to your orator or to his order. Your orator further states, that the said John Lapsely, Samuel Mifflin, and Henry Nixon, trustees of the said West aforesaid, (whom your orator prays may be made defendants hereto,) in like manner sued out an attachment from the same to some other court holden in the city of Philadelphia, against Latimer or your orator, on an open account, amounting to about the sum of nineteen hundred dollars, contracted with the said West, in the said city, whilst your orator resided in Kentucky, the said West and his said trustee possessing a full knowledge thereof, to subject in like manner the funds of your orator in said Latimer's hands to the payment of said account, whereby the said funds were not only tied up in the hands of said Latimer, but he the said Latimer was, by the operation of law, or by order of court, from whence the attachment emanated, forbid to pay the same, or any part thereof, to your orator or his order.

Your orator charges, first, that the time the said funds were tied up as aforesaid, the said Latimer was only solvent, but in flowing circumstances, but was ready and willing to pay the same over to your orator or to his order, and would have done so had he not been prevented by said attachment. Secondly, that the said Latimer continued, for some time after said attachments sued out, to be in like circumstances; and that, had not the said West and his trustees, and the said executors of John Nixon, deceased, procrastinated the said suits, each of them respectfully contending against the other, the money, or the proceeds of said ginseng, might have been forced out of the hands of said Latimer. Thirdly, that, by the obstinacy of one or all the said defendants, the said suits against Latimer and your orator were continued until about day of , when, from the casualties of commerce, and other misfortunes of trade, the said Latimer became insolvent and unable to pay his debts, by reason whereof the funds as aforesaid belonging to your orator were totally lost. Fourthly, that the said Latimer, soon after his failure, departed for Europe, in some part of which continent your orator is informed he still resides, and in insolvent circumstances. Fifthly, that, by the laws of Pennsylvania, the said West, the said executors, and the said trustees made themselves responsible to your orator, by suing out said attachment against your orator and said Latimer, for any loss sustained by your orator in consequence of the failure of said Latimer; and that, by the same laws,

they are further responsible to your orator for any loss he may incur by the said failure, by reason of the said bonds and notes being executed to the said West, in the city of Philadelphia, the said West and the rest of the parties possessing a perfect knowledge that your orator at that time resided in Kentucky, where he has ever since continued to reside, and that he had been for several years trading between Kentucky and said city, as they knew; and your orator is advised that, under those circumstances, the attachments, although they tied up your orator's funds in the hands of said Latimer, were illegal at their commencement. Your orator further states, that the said Thomas Willing and Henry Nixon, executors as aforesaid, finding that by the insolvency of said Latimer no money was to be obtained by them on their said attachments, have transferred the said bonds and notes to the said West, who, without allowing your orator any credit for the losses sustained by reason of the said attachments, or for the money which your orator's account from Bush or for the amount settled, as aforesaid, as his special bail to Anderson, has brought suit against your orator on the said bonds and notes in this honorable court, on the common law side thereof, and at the last term obtained judgments, and threatens to harass your orator by executions against his person and property, notwithstanding he, the said West, well knew that if the matter contained in this bill were fully examined and inquired into, and a balance struck on suitable principles, that he, the said West, and the executors and trustees, would fall considerably in debt to your orator. All such actings and doings the said West, &c., are contrary to equity and good conscience. In tender consideration whereof, and for as much as your orator is relievable only in equity, where hardships are relieved against, frauds redressed, and men compelled to do equity to each other. To the end that the said Francis West, and John Lapseley, Samuel Mifflin, trustees of said West, and Thomas Willing and Henry Nixon, executors of John Nixon; deceased, may be made defendants hereto, and upon their corporal oaths true and perfect answer make to all and singular the premises, as fully as if the the same were herein repeated by way of interrogatory; that the said West may be compelled to allow your orator credit as herein set forth, together with the amount of losses sustained by reason of the attachments before set forth, and the subsequent insolvency of Latimer; and that the said trustees and executors may be compelled to compensate your orator for the losses he has sustained by said attachments and the insolvency of Latimer; and that, in the mean time, until the matters herein contained can be fully heard by this honorable court, may it please your honors to grant the writ of injunction, restraining, &c., and the writ subpoena, &c., together with such other and further relief as to equity may seem proper: and your orator will ever pray,&c.

May term, 1824. Sworn to in open court by Walter Brashear.

Attest, JOHN H. HANNA, *C. C. C. K. D.*

I release all errors at law.

WALTER BRASHEAR.

Papers referred to in the foregoing bill, to wit:

LEXINGTON, KENTUCKY, *October* 22, 1810.

Then received of Walter Brashear, as special bail for Francis West, of Philadelphia, a suit in being an action on the case, lately depending in the Fayette circuit court, in which I was plaintiff, and said West was defendant,

and in which I recovered a judgment for five thousand one hundred and ninety-eight dollars, which from a remitter was to be discharged by the sum of four thousand dollars and costs; on which judgment, by virtue of a scire facias, judgment was recovered against said Brashear, as special bail, for said sum and costs, &c.; I say, received by me of said Brashear the sum of three thousand and seventy-seven dollars thirty-three cents, being in full satisfaction of an execution issued against said Brashear. Witness my hand and seal, the day and date above.

GEORGE ANDERSON. [SEAL.]

Teste: W. MACKBEAN.

Upon the foregoing bill, the following subpoena in chancery, with injunction, issued, to wit:

The United States of America to the Marshal of the Kentucky district, greeting:

You are hereby commanded to summon Francis West, Thomas Willing, and Henry Nixon, executors of John Nixon, deceased, John Lapseley, Samuel Mifflin, and Henry Nixon, trustees of Francis West, citizens of the State of Pennsylvania, to appear before the Judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol in Frankfort, on the second Monday in October next, to answer a bill in chancery exhibited against them by Walter Brashear, a citizen of the State of Kentucky; and this he shall in no wise omit, under the penalty of four hundred dollars, and have then there this writ. In testimony whereof, John Marshall, Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 24th day of May, 1815, and of our independence the 39th.

Attest, JOHN H. HANNA, *C. C. C. K. D.*

Marshal's return—No inhabitant of the district of Kentucky.

CHAPMAN COLEMAN, *Dep. M.*
For Robert Crockett, M. K. D.

And afterwards, to wit, at rules held in clerk's office of the court aforesaid, in the month of December, and year 1815, came the complainant by his counsel; and, on his motion, it is ruled that unless the defendants, enter their appearance herein on or before the next rule day, and answer the complainant's bill, the same will be taken for confessed against them, and the cause is set for hearing at the next term.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of February, and year 1816, (until which time this cause was continued on the rules,) came the complainant by his counsel; and the defendants still failing to appear and answer the complainant's bill, though ruled so to do, it is ruled that the same be taken pro confesso against them, and the cause be set for hearing at the next term of this court.

And afterwards, to wit, at rules held as aforesaid, in the month of March, and year last aforesaid, (until which time this cause was continued,) came the complainant by his counsel, and gave the defendants a rule for hearing herein.

And afterwards, to wit, at rules held as aforesaid, in the month of April, and year last aforesaid, (until which time this cause was continued,) came the complainant by his counsel, and set this cause for hearing at the next term.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, came the complainant by his counsel; and it appearing to the sa-

tisfaction of the court that the defendant is not an inhabitant of this district, on the motion of the said complainant, it is ordered that the said defendant appear here on the first day of the next November term, and show cause, if any he can, why the complainant's bill against him should not be taken for confessed, and that a copy of this order be inserted in the for twelve months successively.

Afterwards, to wit, at the November term of the court aforesaid, came the defendants aforesaid by their attorney; and, on his motion, it is ordered that the rule taking the complainant's bill for confessed be set aside, and they have leave to file their answer herein, which was done accordingly, which answers are as follows, to wit:

The joint answers of Henry Nixon and Thomas Wayne Willing, executors of the last will and testament of John Nixon, deceased, to the bill of complainant of Walter Brashear, a citizen of the State of Kentucky, filed in the circuit court of the United States for the seventh circuit, composed of the district and State of Kentucky, in chancery sitting, in a certain cause there depending, wherein the said Walter Brashear is complainant, and these respondents, together with a certain Francis West and John Lapseley and Samuel Mifflin, are defendants.

The said Henry Nixon and Thomas Wayne Willing, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exceptions to the manifold uncertainties and imperfections in the complainant's said bill of complaint contained for answer thereunto, or unto so much thereof as materially concerns them to make answer unto, they answer and say: They admit the said Walter Brashear, being then, as they believe he has since continued to be, a citizen of the State of Kentucky, executed two notes of hand in the city of Philadelphia, and State of Pennsylvania, to a certain Francis West, of the said city, bearing date the 28th day of February, in the year of our Lord 1807, and payable at fifteen months after date, one of them for three thousand and five hundred and twenty-seven dollars and eighty-one cents, and the other for three thousand five hundred and twenty-seven dollars and eighty-two cents, which said notes became due and payable on the 28th of May, in the year of our Lord 1808, in the city of Philadelphia; and these defendants admit that the said notes were, soon after their date, endorsed and delivered over by the said Francis West to the said John Nixon, to secure a debt owing by the said Francis to the said John; and that the said John Nixon departed this life on the 31st day of December, 1808, having by his last will and testament appointed these defendants executors thereof; and these defendants further admit, that, shortly after the endorsement and delivery of the abovementioned notes to John Nixon by Francis West, on or about the 1st day of April, 1807, he assigned all his effects, real, personal, and mixed, to Samuel Mifflin, John Lapseley, and Henry Nixon, all of the city of Philadelphia, in trust for the benefit of his creditors; and these defendants have heard, and believe, that the complainant consigned from Kentucky, in the year 1808 or 1809, a considerable quantity of ginseng to James Latimer, merchant of Philadelphia, for sale; but whether any or what instructions were given as to the terms of sale, or what was the intention of the complainant as to the appropriation of the proceeds, these defendants know not, and cannot say: And these defendants, further answering, say, that they have understood and admit that the said James Latimer sold the said ginseng; and they have been informed, and believe, that, when the proceeds thereof were credited by him to the complainant in account, there re-

mained a balance of four thousand nine hundred and eighty-five dollars and twenty-three cents, or thereabout, due by him to the complainant; and these respondents neither know nor have heard of any other ginseng consigned by the complainant to the said Latimer, nor of the proceeds of any other which come to his hands; and these defendants have no knowledge of any moneys received by Francis West on account of the complainant from William Bush, nor whether the complainant became special bail for said West in the suit stated in the complainant's bill, nor whether the proceedings in the said suit, as set forth by the complainant, did or did not take place, and whether the settlement with, and payment of money to, Anderson, who is said to be the plaintiff in said suit, have or have not actually happened; to all which matters these defendants are entire strangers, nor do they admit that they can in any manner affect the right of the testator, or of themselves as bona fide endorsers and holders of the notes of hand before mentioned. And these defendants, further answering, say, that true it is, that, on or about the day of in the year of our Lord 1809, a writ of foreign attachment was sued out in the name of said West by Samuel Mifflin and John Lapseley, two of his assignees, without the knowledge or consent of either of these defendants, which writ was returnable to the June term, in the said year, of the court of common pleas of the city of Philadelphia, against the complainant, which was served upon the said James Latimer, who was summoned as garnishee of the complainant, for a balance of account due and owing by him to the said Francis, and amounting to about two thousand dollars, as they have understood and believe; and these defendants have requested the complainant to pay the amount of the said notes of hand, to which request no attention was paid by him; hearing accidentally of the attachment last mentioned, and that James Latimer had effects of the complainant in his hands, they likewise, on or about day of in the year of our Lord 1809, sued out a writ of foreign attachment in the same court, returnable to the December term of the said court, in the same year, and caused the same to be served upon the said James Latimer, who was summoned as garnishee of the complainant, for the amount due upon the said notes of hand, as by the laws of Pennsylvania they were advised and believe they had a right to do, the complainant being out of the jurisdiction of the State of Pennsylvania, and not an inhabitant thereof; and these defendants annex hereto a certified copy of the proceedings in the said suit last mentioned, taken from the record thereof, which they pray may be received as part of their answer. And these defendants, further answering, say, the proceedings in said attachment were carried on with as much despatch as the law would admit, without any voluntary delay on their part: that, in the mean while, they requested the complainant, verbally and by a letter, to direct Mr. Latimer to apply the balance in his hands to the satisfaction of the debt due to the complainant in the attachment first mentioned in the first instance, and the residue to the discharge of the said notes of hand held by these defendants, but the complainant paid no attention to the said request, and neglected, as these defendants aver and believe, to give any such direction to the said Latimer. And these defendants, further answering, do not admit at the time they caused the writ of attachment to be issued, the said James Latimer was solvent and much less in flourishing circumstances; on the contrary, it was owing to the doubts they entertained of his ability to meet his engagements that they were urgent in their endeavors to prevail upon the complainant to give directions to said James Latimer to pay over the funds in his hands belonging

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to the complainant, in satisfaction of the demands of the assignees of the said Francis West, and these defendants, for which the attachments had been laid as aforesaid, and also to induce the said James Latimer to appropriate the funds to these purposes; and these defendants annex hereto copies of certain letters which were written by them, and sent to the complainant, bearing date, respectively, the 4th of November, 1809, the 2d of January, 1812, also a copy of a letter written by them and sent to said Latimer, dated 24th of June 1811; all which they pray may be received as a part of their answer: and they aver that in conversations with the complainant when he was on a visit to Philadelphia in the latter part of the year 1811, and with the said James Latimer about the time of their writing the said letter to him, they urged that such an appropriation should be made of the funds in his hands; but their applications were received in silence by the complainant, and were refused by the said Latimer: and these defendants also annex copies of two letters written and sent by them to Francis West, and to Messrs. Lapseley and Mifflin, his acting assignees in that behalf, the former dated on the 28th of February, 1810, and the latter on the 7th March following, showing the anxiety of these defendants to accelerate as much as possible the getting the funds out of the hands or Mr. Latimer, in which, however, they were unable to succeed; and they pray that the said copies of letters last mentioned may be received as the former. And these defendants cannot and do not admit that the said Latimer, at the time of laying the said attachment by them, was ready and willing to pay the funds in his hands belonging to the complainant to him or his order, or that he would have done so but for the said attachment, nor that the fact is at all material. And these defendants, further answering, say, that they believe the circumstances of the said James Latimer, after the laying of the said attachment, gradually worse and worse; and they expressly deny that their said suit was procrastinated; on the contrary, they aver that it was carried on with all due diligence, and with as much despatch as the laws of Pennsylvania and the practice of the courts admitted; and that, when it had proceeded to judgment, measures were to be taken to compel the said Latimer to account for the funds in his hands; he failed, and, on the 29th of August, 1811, made an assignment of his property, which was insufficient to pay his preferred and therefore left nothing for his general creditors, of whom the complainant was declared to be one; and these defendants also deny that they had any contention whatever with the said West or his assignees in relation to the attachment laid in his name, but, on the contrary, they always admitted that it was entitled to priority over the suit instituted by themselves, being prior in date. And these defendants, further answering, say, they believe the said Latimer did, some time after the said assignment, embark on a voyage to , whence he returned, and is now residing in , in what circumstances these defendants say, And these defendants deny that by the laws of Pennsylvania they have made themselves responsible to the complainant by suing out the said attachment against him and the said Latimer, or otherwise, however, for any loss sustained by the complainant in consequence of failure of the said Latimer; and they deny that the said attachment was illegal; on the contrary, averring that they are advised and believe that the proceedings at the commencement of the said attachment, and throughout, were strictly according to law; that the complainant was soon after the issuing the writ, informed thereof by these defendants, and had a fair opportunity to avail himself of illegality or irregularity, if any had existed in any part of the pro-

ceedings, or might, according to the laws of this State, by giving bail to the action, have *dissolved* the attachment altogether, and placed his funds entirely at his own disposal in the same manner as if the said attachment had never been issued. And these defendants, further answering, say, that they deny they have transferred the said notes or either of them to the said West, but they admit that they caused suits to be brought for the recovery thereof against the complainant, and hope to succeed therein, that the proceeds may be applied to the discharge of a large balance due from the said West to them, in right of their testator, for securing which the said notes were endorsed and delivered over to him, as they have already stated. Without that there is any other matter or thing in the complainant's said bill of complaint contained material or effectual for these defendants to make answer unto, and not herein and hereby sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants.

HENRY NIXON,
THOMAS W. WILLING.

Thomas Wayne Willing and Henry Nixon, being sworn according to law, declare and say, that what is contained in this their answer to the bill of complaint of Walter Brashear, as far as concerns their own acts and deeds, is true of their own knowledge, and that what relates to the act and deed of any other person or persons they believe to be true.

Sworn to, November, 1817, before me, Bushrod Washington, one of the Associate Justices of the Supreme Court United States.

BUSH. WASHINGTON.

Pleas at Philadelphia before the Honorable Jacob Rush, Esquire, President, and his associate Judges of the court of common pleas of the county of Philadelphia, of the term of December, in the year of our Lord one thousand eight hundred and nine.

Among other things it is thus continued:

Henry Nixon and Thomas W. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, vs. *Walter Brashear.*

Be it remembered, that heretofore, to wit, on the ninth day of October, in the year of our Lord one thousand eight hundred and nine, the said plaintiffs, by William Lewis, Esq., their attorney, sued forth out of the said court the writ of the Commonwealth of Pennsylvania of foreign attachment to the Sheriff of Philadelphia county directed, in the words and of the tenor following, to wit:

PHILADELPHIA COUNTY, sct.—*The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:*

We command you to attach Walter Brashear, late of your county, yeoman, all and singular his goods and chattels, rights and credits, in whose hands or possession soever they may be found, in your bailiwick, so that he be and appear before our Judges at Philadelphia, at our county court of common pleas, there to be held the first Monday in December next, to answer Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, in a plea of trespass on the case &c.: have you then there this writ.

Witness Jacob Rush, Esq., at Philadelphia, the 23d day of September, in the year of our Lord one thousand eight hundred and nine.

FRED. WALBERT.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and nine, the return day before recited in the writ, came into court here the said plaintiffs, by their said attorney, and the sheriff of the county aforesaid, to wit, William T. Donaldson, Esq., to whom the said recited writ was in form aforesaid directed, and makes return here to the court of said writ, thereon endorsed, to wit:

October 7th, 1809. Attached at 15 minutes past one o'clock P. M., all and singular the goods and chattels, rights and credits, moneys and effects, in the hands of James Latimer, and summoned him garnishee.

JAMES SNYDER, *Deputy*,
Wm. T. Donaldson, Sheriff.

And the said Walter Brashear does not The said attorney did then and there declare against the said Walter Brashear in the plea aforesaid, in manner following, that is to say, Walter Brashear, late of the county aforesaid, yeoman was attached to answer Henry Nixon and Thomas M. Willing, executors of the testament and last of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c.; and thereupon the said Henry Nixon and Thomas M. Willing, by William Lewis, their attorney, complain that the said Walter, on the 28th day of February, in the year of our Lord one thousand eight hundred and seven, at the county aforesaid, made his certain note in writing, commonly called a promissory note, with his proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note a certain Francis West did then and there deliver, and by the same note at fifteen months after the date thereof promised to pay to the said Francis or order without defalcation three thousand five hundred and twenty-seven dollars and eighty-two cents, value received. And afterwards the said Francis, to whom or to whose order the payment of the said sum of money in the said note mentioned was to be made, before the payment of the said sum of money, or any part thereof, and also before the time appointed by said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on the said note, with the name of him, the said Francis, by him thereto subscribed, assigned, endorsed, and made over the said note, and ordered and appointed the contents thereof to be paid to the said John Nixon; by reason whereof, and by force of the act of the General Assembly, and according to the laws in such case made and provided, and heretofore received within this Commonwealth, and the laws and customs and usages of the same, the said Walter become liable to pay to the said John the said sum of money in the said note mentioned, according to the tenor and effect thereof, and of the said endorsement; and the said Walter being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, and county aforesaid, assumed upon himself, and to the said John faithfully promised the said sum of money well and truly to pay, according to the tenor and effect of the note and endorsement; and also that the said Walter, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, made his certain other note in writing, commonly called a promissory note, with his own proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note to a certain

Francis West then and there did deliver, and by the same note, at fifteen months after the date thereof, promised to pay to the said Francis or order, without defalcation, three thousand five hundred and twenty-seven dollars and eighty-one cents, value received. And afterwards the said Francis, to whom or to whose order the payment of the same sum of money, or any part thereof, and also before the time appointed by the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on the same note with the name of him, the said Francis, by him thereto subscribed, assigned, endorsed, and made over the same note, and ordered and appointed the contents thereof to be paid to the said John: by reason whereof, and by force of the statute and act of Assembly, and according to the laws in such cases made and provided, and heretofore received within this Commonwealth, and the laws, customs, and usages of the same, the said Walter became liable to pay to the said John the same sum of money in the same note mentioned, according to the tenor and effect thereof, and after the same endorsement; and the said Walter being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, assumed upon himself, and to the said John faithfully promised the same sum of money well and truly to pay, according to the tenor and effect of the same note and endorsement.

Yet the said Walter, his several promises and assumptions aforesaid, in form aforesaid made, not regarding, but contriving and intending the said John in these respects to deceive and defraud, the said sums of money, or either of them, or any part thereof, to the said John in his lifetime did not pay, nor hath he paid the same or any part thereof to the said Henry and Thomas since the death of the said John, although to do this the said Walter, afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and eight, at the county aforesaid, was, by the said John, in his life time required; but the same to pay to the said John in his lifetime did refuse, and to the said Thomas and Henry, since the decease of the said John hath refused, and still doth refuse, to the damages of the said Henry and Thomas twelve thousand dollars, lawful money of the United States; and thereof they bring suit &c. And the said Henry and Thomas also bring here into court the letters testamentary of the said John, whereby it sufficiently appears to the court here that they are executors of the same, and thereof have administration, &c.

Thereupon further day is given the said defendant until the first Monday of March next; on which first Monday of March, it being the fifth day of the month, in the year of our Lord one thousand eight hundred and ten, the said plaintiffs, by their attorney aforesaid, came again into court, and the said Walter Brashear, the said defendant, although solemnly called, come not; and further day is given him until the first Monday of June next; on which first Monday of June, it being the fourth day of the month, in the year last aforesaid, the said plaintiffs, by their attorney aforesaid, came again into court, and the said defendant, although called, came not: and now, in this present term of June, to wit, on the sixteenth of August, in the year of our Lord one thousand eight hundred and ten, the said plaintiffs, by their said attorney, come again into court, and the said defendant, although solemnly called, comes not; and the said plaintiffs shewing to the court here that they have in all things complied with the act of Assembly of the Commonwealth of Pennsylvania, "An act about attachments," it is therefore adjudged by

the court here that the said plaintiffs do recover against the said Walter Brashear, the defendant, their damages by reason of the premises by them sustained; but because it is unknown to the court here what damages the said plaintiffs have sustained by occasion thereof, therefore, at the instance of the said William Lewis, Esq., attorney for the plaintiffs, a writ of the Commonwealth of Pennsylvania of inquiry of damages issues forth out of the court here, in the following words, to wit:

PHILADELPHIA COUNTY, sct.—*The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:*

Whereas Walter Brashear, late of the county aforesaid, was attached to answer Henry Nixon and Thomas M. Willing, executors of the testament and last will of said John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c.; and thereupon the said Henry Nixon and Thomas M. Willing complain that the said Walter, on the 28th day of February, in the year of our Lord one thousand eight hundred and seven, at the county aforesaid, made his certain note in writing, commonly called a promissory note, with his proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note a certain Francis West then and there did deliver, and by the same note, at fifteen months after the date thereof, promised to pay to the said Francis or order, without defalcation, three thousand five hundred and twenty-seven dollars and eighty-two cents, value received; and afterwards the said Francis, to whom or to whose order the payment of the said sum of money, or any part thereof, and also before the time of appointment by the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on said note, with the name of him, the said Francis, by him thereto subscribed, assigned, endorsed, and made over the said note, ordered and appointed the contents thereof to be paid to the said John Nixon: by reason whereof, and by force of the statute and act of the General Assembly, and according to the laws in such cases made and provided and heretofore received within the Commonwealth, and the laws, customs, and usages of the same, the said Walter became liable to pay to the said John the said sum of money in the said note mentioned, according to the tenor and effect thereof, and of the said endorsement; and the said Walter being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, assumed upon himself, and to the said John faithfully promised the sum of money well and truly to pay, according to the tenor and effect of the said note and endorsement; and also that the said Walter, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, made his certain other note in writing, commonly called a promissory note, with his own proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note to a certain Francis West then and there did deliver, and by the same note at fifteen months after date thereof, promised to pay to the said Francis or order, without defalcation, three thousand five hundred and twenty-seven dollars and eighty-one cents, value received; and afterwards, the said Francis, to whom or to whose order the payment of the same sum of money in the same note mentioned was to be made, before the payment of the same sum of money, or any part thereof, and also before the time appointed by the said note for the payment thereof, to wit, at the county aforesaid, by his certain endorsement in writing on the same, and the name of him, the said Francis West,

by him thereto subscribed, assigned, endorsed, and made over the same note, and ordered and appointed the contents thereof to be paid to the said John: by reason whereof, and by force of the statute of the General Assembly made and provided and heretofore received within this Commonwealth, and the laws, customs, and usages of the same, the said Walter became liable to pay to the said John the same sum of money in the same note mentioned, according to the tenor and effect thereof, and of the same endorsement; and that the said Walter, being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, assumed upon himself, and to the said John faithfully promised the same sum of money well and truly to pay, according to the tenor and effect of the same note and endorsement. Yet the said Walter, his several promises and assumptions aforesaid, in form aforesaid made not regarding, but contriving and intending the said John although to do this, the said Walter, afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and eight, at the county aforesaid, was, by the said John, in his lifetime, required, but the same to pay to the said John in his lifetime refused, and still doth refuse, to the damage of the said Henry and Thomas twelve thousand dollars, lawful money of the United States; and thereof they bring suit, &c.; and the said Henry and Thomas bring also here into court the letters testamentary of the said John, whereby it sufficiently appears to the court here that they are executors of the same, and thereof have administration &c,.; and it was in such manner proceeded in our said court that the said Henry Nixon and Thomas M. Willing, executors of the last will and testament of John Nixon, deceased, who was endorsee of Francis West, ought to recover their damages against the said Walter Brashear by reason of the premises; but because it is unknown what damages the said Henry and Thomas have sustained on that occasion, therefore, we command you that, by the oath and affirmation of twelve lawful and honest men of your bailiwick, you diligently inquire what damages the said Henry Nixon and Thomas M. Willing, executors of said John Nixon, deceased, have sustained, as well by reason of the premises as for their costs and charges by them about their suit in that behalf expended; and the inquisition you shall take thereof make manifest before our Judges at Philadelphia, at our county court of common pleas, there to be held the first Monday of June next, under your seal, and under the seals of those by whose oath or affirmation you shall make the inquisition with this writ.

Witness Jacob Bush, Esq., at Philadelphia, the ninth day of March, Anno Domini one thousand eight hundred and eleven.

FRED. WALBERT, *Proth'y*.

At which said first Monday of June, being at day of the said month, in the year of our Lord one thousand eight hundred and eleven, and the return of the said last aforegoing writ, comes again the said plaintiffs into court here by their attorney aforesaid, and the Sheriff of said county of Philaphia, to whom the said writ was in form aforesaid directed, and makes return thereof to the court here thereon endorsed, that is to say: "The execution of this writ appears in a certain schedule hereto attached, to answer. Francis Johnson, Sheriff;" which said schedule is in the following words, to wit:

PHILADELPHIA COUNTY, set.

An inquisition indented and taken at the city of Philadelphia, in the county aforesaid, this first day of June, in the year of our Lord one thousand

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eight hundred and eleven, before Francis Johnson, Esq., High Sheriff of the city and county of Philadelphia, by the oaths and affirmations of Samuel Twen, jr., Cornelius Stevenson, Frederick Ewinger, Joseph Lyon, Stephen Cornick, Robert Gaw, Adam Tagrin, Morris Stanley, Robert Gray, Anthony Tennen, Jacob Chrysther, James Paull, and George C. Snyder, good and lawful men of my bailiwick, who say, upon their oaths and affirmations, that the said Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, in the writ to this inquisition annexed named, have sustained damages by means of the premises in the said writ mentioned, against William Brashear, to the amount of eight thousand three hundred and twenty-eight dollars and thirty cents, lawful money of Pennsylvania, and six cents cost.

In testimony whereof, as well I, the said Sheriff, as the jurors aforesaid to this inquisition, have fixed our hands and seals, the day and year above mentioned.

Francis Johnson,	[L. S.]	G. C. Snyder,	[L. S.]
Norris Stanley,	[L. S.]	Samuel ———, jr.	[L. S.]
Robert E. Gray,	[L. S.]	C. Stevenson,	[L. S.]
Anthony Tanner,	[L. S.]	F. Ewinger,	[L. S.]
Robert Gaw,	[L. S.]	Joseph Lyon,	[L. S.]
Jacob Chrysther,	[L. S.]	Stephen Carnick,	[L. S.]
James Paull.	[L. S.]	Ad. Traquar.	[L. S.]

Therefore it is considered by the court here that the said Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, do recover against the said Walter Brashear, the defendant, the said sum of eight thousand three hundred and twenty-eight dollars and thirty cents, lawful money of Pennsylvania, their damages aforesaid in form aforesaid found, and also the sum of eighteen dollars and eighty-six cents for their costs and such charges by them about their suit in this behalf expended, and the said Walter Brashear, in mercy, &c.

Philadelphia county, sct.

I, John Porter, Prothonatory of the court of common pleas of Philadelphia county, do certify that the foregoing contains a copy of the record, proceedings, and judgment in the above case, from the records of the said court, and that the said judgment remains in full force, unabated and unsatisfied.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Philadelphia, the 23d day of October, Anno Domini 1817.

[L. S.] JN. PORTER, *Proth'y.*

Pennsylvania, Philadelphia county, sct.

I, Jacob Bush, Esq., President of the first judiciary district of Pennsylvania, and presiding Judge of the court of common pleas, court of general quarter sessions of the peace, and orphans' court, in and for the county of Philadelphia, do hereby certify that the foregoing record attestation, made by John Porter, Esq., Prothonatory of the said court of common pleas, whose name is thereto subscribed, are in due form.

Witness my hand and seal at Philadelphia, the 28th day of October, Anno Domini, one thousand eight hundred and seventeen.

[L. S.] JACOB BUSH.

Pleas at Philadelphia before the Honorable Joseph Hemphill, Esq., President, and his associate Judges, of the district court for the city and county of Philadelphia, of the term of September, in the year of our Lord one thousand eight hundred and eleven.

Among other things, it is thus continued:

One thousand eight hundred and eleven. A precept of the Commonwealth of Pennsylvania, commonly called a writ of scire facias, against garnishee, issued at the suit of Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, against James Latimer, garnishee of Walter Brashear, in the words following, to wit:

PHILADELPHIA COUNTY, sct:—*The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:*

Whereas, by our writ, we lately commanded you, that you should attach Walter Brashear, late of your county, yeoman, by all and singular his goods, chattels, rights, and credits whatsoever, or wheresover the same might be found, in your bailiwick, so that he should be and appear before our justices at Philadelphia, at our court of common pleas, there to be held the first Monday of December next, to answer Henry Nixon and Thomas Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c., upon which said writ you then returned that you had attached all the moneys, goods, and effects of the said Walter Brashear, in the hands and possession of James Latimer, and it was proceeded in such manner in our said court that the said Henry and Thomas, executors as aforesaid, by the consideration of the said court, ought to recover against the said Walter Brashear the sum of eight thousand three hundred and twenty-eight dollars and thirty cents, which the said Henry and Thomas, executors as aforesaid, in our same court, were adjudged for their damages, which were sustained as well by occasion of the non-performance of a certain promise and assumption by the said Walter to the said John Nixon, in his lifetime, at Philadelphia, in your county, made, as by their costs and charges by them about their suit in that behalf expended, whereof the said Walter Brashear was convict as appears of record and the said Henry and Thomas, executors as aforesaid, praying that a convenient remedy for the recovery thereof in the hands of the said James Latimer, may be had, and we being willing that those things which are rightly done of said court be duly executed, we command you, that by honest and lawful men of your bailiwick, you make known to the said James Latimer, that he be and appear before our justices at Philadelphia, at our district court for the city and county of Philadelphia, there to be held the first Monday of September next, to show, if any thing he has or knows to say, why the aforesaid Henry and Thomas, executors as aforesaid, their execution for the damages aforesaid, of the proper goods and chattels of the said Walter Brashear, in the hands of him, the said James Latimer being, ought not to have; and have you then there the names of those persons by whom you shall make it known to him, and this writ.

Witness Joseph Hemphill, Esq., at Philadelphia, the 8th day of June, in the year of our Lord one thousand eight hundred and eleven.

JOHN PORTER.

And now, to wit, the first Monday of September, in the year of our Lord one thousand eight hundred and eleven, the sheriff of Philadelphia county aforesaid, namely, Francis Johnson, Esq., maketh return upon the

writ aforesaid, that on the second day of July, in the year aforesaid, he summoned the defendant.

And now, to wit, September term, A. D., 1811, continued; December term, 1811, continued; March term, 1812, continued; June term, 1812, continued; September term, A. D. 1812, continued; December term, A. D. 1812, continued; March term, A. D. 1813, continued; June term, A. D. 1813, continued; September term, A. D. 1813, continued; December term, A. D. 1813, continued; March term, A. D. 1814, continued; June term, A. D. 1814, continued; September term, A. D. 1814, continned; March term, A. D. 1815, continued; June term, A. D. 1815, continued; September term, A. D. 1815, continued; December term, A. D. 1815, continued; March term, A. D. 1816, continued; June term, A. D. 1816, continued; September term, A. D. 1816, continued; December term, A. D. 1816, continued; March term, A. D. 1817, continued; June term, A. D. 1817, continued.

I, Timothy Mattack, prothonatory of the district court for the city and county of Philadelphia, do certify that the above is a true copy of the proceedings on a certain writ of scire facias at the suit of Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, against James Latimer, garnishee of Walter Brashear, as the same remains of record in my office.

In witness whereof, I have hereto set my hand and affixed the seal of the said court, at Philadelphia, the 31st day of October, in the year of our Lord one thousand eight hundred and seventeen, and of the sovereignty and independence of the United States of America the forty-second.

T. MATTACK. *P. D. C.*

I, Joseph Hemphill, Esq., President of the district court for the city and county of Philadelphia, do certify that the within record and attestation, made by Timothy Mattack, Esq., prothonatory of the said court, and whose name is thereto subscribed, is in due form.

In testimony whereof, I have set my hand, the 31st day of October, in the year of our Lord one thousand eight hundred and seventeen, and of the sovereignty and independence of the United States of America the forty-second.

JOS. HEMPHILL.

PHILADELPHIA, *4th November*, 1809.

Dr. WALTER BRASHEAR, *Bardstown, Kentucky:*

SIR: From the correspondence of our testator, the late J. Nixon, Esq., we find that you were urged to make payment of your note for $7,055 63, in favor of Mr. West, and endorsed by him to Mr. J. Nixon, for a valuable consideration. During Mr. Nixon's lifetime no remittances appears to have been made on account of these notes; of course the whole debt, with the accruing interest to the present time, is due to the estate we represent. Mr. West, since the death of Mr. Nixon, has stated that a remittance of ginseng had been made to Mr. J. Latimer, of this place, to provide in part for the payment to your notes, and also a balance of about $2,000 due his estate. His assignees, Messrs. Mifflin and Lapseley, on being informed of this remittance, laid an attachment in the hands of Mr. Latimer, to secure their balance, which, of course, established their priority of payment, as

their proceedings have taken place several months since. Finding a sum would remain with Mr. Latimer, after the payment of their demand, nearly sufficient to discharge one of your notes, we attached the same to the benefit of Mr. Nixon's estate. As no provision has been made for the payment of one of your notes, you will oblige us by pointing out when we may expect its discharge; and to request that all remittances on account of your notes, assigned to Mr. Nixon, may be made to us, his representation. We think a direction from you to Mr. Latimer to pay over the balance due on your ginseng on the attachments, would save you much interest, as many months must elapse before the law will possess either the assignees or us of our legal claims.

Yours,

(Signed) HENRY NIXON,
THOS. M. WILLING,
Executors of the

PHILADELPHIA, *2d February.*

SIR: We beg leave to call your attention to the following letter, and to state your funds in Mr. Latimer's hands must lay without interest under the attachment, until they are divided, unless you order him to pay over the same in the proportions that are due, first to Mr. West's assignees, for the balance of your account as settled with Mr. West when in Kentucky, of about $2,000, and what remains on the two notes in our possession, as stated in our letter of the 4th November last, together $7,055 63.

We remain your obedient servants,

HENRY NIXON,
THOS. M. WILLING,
Executors of

SIR: It was our hope that before your departure for Kentucky, an arrangement would have been made by you with Mr. Latimer, which would have enabled us to have received, from your effects in his hands, the amount of your notes in our [his] possession: in this expectation we were disappointed, being left to legal remedy under the attachment. Judgment has been had, and the usual proceedings to compel Mr. Latimer to account for the amount in his hands belonging to you. Mr. Latimer has lately failed, and assigned all his property to pay his preferred creditors in the first instance to the extent of $80,000, and afterwards his general creditors, of which latter class you are one. It is not believed his property will not do more than pay his preferred debts; of course we cannot calculate on receiving any part of your debt from him, but must look to you for its discharge: you will therefore oblige us by pointing out your means of payment, and stating when we may expect it, as we are desirous of communicating to those interested some satisfactory information relative to the claim. We offered Mr. Latimer security, if he would pay us the amount due you, which was declined, on the ground of his being advised to do so. We believe it was not in his power to pay at the time, his credit having been long suspected by many as well as by ourselves: indeed you may recollect to receive payments which arose from a belief that your funds in his hands insecure.

We remain, &c.

HENRY NIXON,
THOS. M. WILLING,
Executors of John Nixon.

Dr. WALTER BRASHEAR, *Bardstown, Kentucky.*

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PHILADELPHIA, *7th March*, 1810.

Messrs. LAPSELEY & MIFFLIN, *assignees of F. West:*

GENTLEMEN: Enclosed is our reply, under date of the 28th of ultimo, to Mr. West's objections on the account of the late Mr. Nixon, as rendered his assignment. You will oblige us by considering our remarks, and withdrawing all opposition to our attachment on Dr. Brashear's property in the hands of Latimer. You certainly can demand of us a settlement, and we must pay over to you any thing recovered beyond what will satisfy the just demand of Mr. Nixon's estate.

We remain yours,
HENRY NIXON,
THOS. M. WILLING,
Executors of John Nixon.

PHILADELPHIA, 28*th February*, 1810.

Mr. FRANCIS WEST, *Philadelphia:*

SIR: Your objections to the account furnished on behalf of the estate of John Nixon have received our immediate attention, and we are pleased to find them so specified as to have no difficulty in our reply. The charge of profit on goods under the 28th February, 1806, in the sum of $1,245 48, is taken from an account rendered by yourself. The entry is in the handwriting of Mr. Nixon: its character of course cannot be charged without full proof of its being relinquished, of which there is no trace with us. The charge of rent was made with your approbation at the time, and appeared so moderate as to receive your consent, "as just, and one which must be allowed.". Copy of the account furnished by Mr. Nixon to your assignees, with an endorsement on it by him to that effect. We hold the account you approved by letter, before your departure for the western country, stating that you had made all the entries to correspond except that of the rent. Nothing appears to be charged you but what was paid after your account has been varied by sundry debts and credits, which are explained by the continued account now enclosed you.

Hart and Bartlett's debt having been recovered, the same is fully credited, they having been charged with the interest on their notes to Mr. Nixon, and credited with all the moneys received on their account. We shall use our best endeavors to recover from Dr. Brashear effects in Mr. Latimer's hands sufficient to liquidate the balance of your account with the estate, and hand over to your assignees any sum received beyond the claim we represent.

In the mean time, if your assignees were to withdraw all opposition to our receiving from Mr. Latimer the sum over which we must ultimately recover under the attachment, the interest would be saved both to the doctor and your estate.

We remain your obedient servants,
HENRY NIXON,
THOS. M. WILLING,
Executors of John Nixon.

Postscript. A small balance is due from Mr. Nixon's estate to Hart and Bartlett, of $103 63, which ought to be paid them, unless you have further claims of these gentlemen; and as Mr. Nixon has received a div the bor-

rowed money of $520 50, on the sum of $1,041, the executors must look to the assignees for the balance of that demand, applying to the benefit of the account whatever may be recovered on the notes of Dr. Brashear, lodged and assigned by you to Mr. Nixon, as a security for the amount due him.

PHILADELPHIA, *June 24th*, 1811.

JAMES LATIMER, Esq.

DEAR SIR: Mr. Lewis informs us that you can now, with safety to yourself, pay into court the balance due to Brashear, and that the executors of Mr. Nixon, by giving bond in the proper form, can secure the amount under their judgment; this facility, however, rests with you, and give or not as you feel authorized.

We are, respectfully, yours,

(Signed) HENRY NIXON,
THOS. M. WILLING,
Executors of John Willing Nixon, Esq.

Afterwards, to wit, at the May term of the court aforesaid, and in the year 1819, until which time this cause was regularly continued, on motion of the complainant, by his attorney, leave is given him to file an amended bill herein, which is done accordingly; and it appearing to the satisfaction of the court that the defendants are no inhabitants of this district, and they having failed to enter their appearance herein, agreeably to law and the rules of this court, on motion of the complainant, it is ordered, that, unless the said defendants appear here on or before the first day of the next term of this court, and answer the complainant's original and amended bills, the same will be taken for confessed against them, and the matters thereof decreed accordingly; and it was further ordered, that a copy of this order be published in some authorized newspaper of this State, for twelve weeks successively.

Amended bill, to wit:

To the honorable the judges of the circuit court of the United States for the seventh circuit, Walter Brashear, complaining, showeth, that the account marked A, filed herewith, and referred to as a part of this bill, contains a true statement of the and money in the hands of Latimer, or when the attachment was issued and levied; that the and the money remained with him silent a long time thereafter, and, by the laws of the State of Pennsylvania, the plaintiff in the attachment had the right and power to demand and obtain from the said Latimer security for the forthcoming thereof, agreeably to the final of the court, or its withdrawal and safe deposite; and if reasonable and usual attention had been bestowed to this matter, that measure would have been adopted, and all parties then saved from the injury by the failure of Latimer; but in contempt of this duty, they permitted the whole fund to remain subject to the management of Latimer, even assenting and encouraging its export, still leaving the proceeds for years at his pleasure, never even yet having issued execution against him, and, by the careless and gross negligence of the plaintiffs in the attachments, the funds even ultimately lost; and your orator expressly charges, that his attachment was levied, and the further proceedings had, under the advice, procurement, and active participation of the said West. He therefore prays that the defendants may answer each allegation of this

bill, especially that they severally state if this measure was resorted to by him jointly, uniting, and participating; is not the statement referred to, a correct account of the and money in the hand of Latimer? when the attachment issued, did they not long remain there, not the reported with their privity and request? did not the proceeds still remain? were any measures to obtain security attempted? might this have been successfully done by the laws of Pennsylvania then in force, &c. &c. Your orator prays as in his former bill, &c. &c.

JA. HAGGIN.

May term, 1824. Sworn to in open court by Walter Brashear.
Attest, JOHN H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at the November term of the court aforesaid, in the year 1819, this cause was remanded to the rules.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the year 1820, came the defendant West, and filed his answer herein, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery, the answer of Francis West, one of the defendants named in the bill of complaint of Walter Brashear. This defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold insufficiencies in the complainant's said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material for him to make answer unto, he answers and says:

That he admits to be true that the complainant made and delivered to him, this defendant, two promissory notes, dated at Philadelphia on the 28th day of February, eighteen hundred and seven, payable to the order of this respondent, one of them for the sum of three thousand five hundred and twenty-seven dollars eighty-two cents, and the other of them for the sum of three thousand five hundred and twenty-seven dollars and eighty-one cents, making together seven thousand and fifty-five dollars and sixty-three cents; which notes were payable fifteen months after the date thereof. That the said notes were endorsed by this respondent, and by him delivered to the said John Nixon, to wit, the month of April following, as a collateral security for the debt owing by him to the said Nixon. That the said John Nixon afterwards died, leaving the said Henry Nixon and Thomas M. Willing his executors. That, after the endorsement and delivery of the said notes as aforesaid, to wit, on the twenty-first day of April, eighteen hundred and seven, this respondent did assign and convey all his estate, real and personal, to John Lapseley, Samuel Mifflin, and Henry Nixon, in trust for the payment of his debts in the order and manner therein provided for. That respondent believes to be true that the complainant did, at some subsequent time, consign from Kentucky, to a certain James Latimer in Philadelphia, not Henry Latimer, as erroneously stated, it is supposed, in the bill of complaint, a quantity of ginseng, although the respondent is ignorant how much; but as to the particular instructions or authority in relation to the sale thereof, given by the complainant to said Latimer, this respondent has no knowledge, nor as to the intention of the complainant in relation to the disposition of the proceeds thereof, save and except that this respondent was informed that the said Latimer was thereout to indemnify himself for some security into which he had entered on behalf of the complainant; and that the surplus would be subject to the

omplainant's order. That the respondent is not informed, and does not know, at what time, nor for what sum the said Latimer sold the said ginseng, otherwise than that he was told by said Latimer that he should take the whole to his own account, at from 40 to 50 cents the pound, and to be answerable for the proceeds in six months; and that he expected there would be a large balance in his hands, after satisfying his engagement as security for the complainant. The respondent admits, that, on third day of November, eighteen hundred and eight, he received from the commissioner of loans, in Philadelphia, the sum of one hundred and twenty dollars, for an order of William Bush, of Kentucky, which was delivered to him by the complainant in said State; but the respondent expressly denies that it was received on account of the debt due from the complainant to this respondent, which had by him, before that time, been assigned to the said Lapseley, Mifflin, and Nixon, and does declare and assert that the money to be received on said order was to be, and still is, in the hands of this respondent, subject to the complainant's order, on account of subsequent transactions between them. The respondent also admits that the complainant did become his special bail in a suit that was instituted against him by George Anderson, late of Lexington, in the State of Kentucky; and he further states, that he is entitled to a credit for the money which was recovered from him by the said Anderson; but whether the money so recovered was paid by him, as he alleges, on the 28th day of October, 1810, or whether it amounted to the sum of three thousand and seventy-seven dollars and thirty-three cents, as stated in said bill, he does not know. The respondent states that the said Anderson had attached a debt due to the respondent from the firm of Thomas and Robert Barr, in Lexington aforesaid, about the time of the respondent's assignment to the said Lapseley, Mifflin, and Nixon; but as to the precise date thereof, he begs leave to refer to the record of said attachment. That the respondent endeavored to settle with the said Anderson when the respondent was in Kentucky, but did not succeed, said Anderson refusing to allow him a credit for a debt which he, as one of the firm of Jordan and Anderson, owed to James G. Murray, of Frankfort, in said State, amounting to two thousand dollars and upwards, and which debt the said James G. Murray had assigned to the respondent, as collateral security for a debt of upwards of twenty-six hundred dollars, due to him by said Murray. That, shortly before the respondent left Lexington, the said Anderson arrested him, and as to the precise time of his arrest, he also begs leave to refer to the record of the suit; and Thomas T. Barr became his bail, and the complainant afterwards became special bail for him in said suit, and the respondent committed all the papers and management of the business to an attorney. That some time afterwards, in the winter or spring of eighteen hundred and ten, the respondent was informed that the said Anderson had obtained judgment against him, and for a much larger sum than he was entitled to. John Lapseley, one of the respondent's assignees, after this, went to Kentucky, and, whilst there, in the month of September following, and before judgment against the complainant, as special bail, succeeded in having the account of said Anderson adjusted; and, for the balance agreed on such adjustment to be due, judgment was soon after entered against the complainant as special bail, as this respondent believes; which balance he further believes to have been little more than one half of the same for which judgment, although no credit was given in said adjustment for the debt due to Murray, or any part thereof, and which debt still remains due and unpaid. The

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respondent further admits, that the executors of John Nixon, deceased, did sue out a foreign attachment from the court of common pleas for the city and county of Philadelphia, to December term, eighteen hundred and nine, upon the two promisory notes before mentioned, which attachment, he believes, was served on James Latimer as garnishee, and that judgment was entered therein in August, 1810; and, also, that the assignees of this respondent did cause a foreign attachment, in his name, but to their use, to issue from the same court on the 7th of April, eighteen hundred and nine, returnable to the June term, in same year, against the complainant, to recover the balance of an account then due, of two thousand one hundred and forty dollars seventy-six cents. That the said attachment was served on James Latimer as garnishee, and judgment was therein entered for the plaintiffs, in January, eighteen hundred and ten, as of December term, 1809, agreeably to the laws of this Commonwealth. And the respondent denies that there was any undue or improper procrastination in this suit, as, by the laws of this Commonwealth, the plaintiff there was bound to proceed or otherwise than they did in said attachment. And this respondent further answers and says, that at the time referred to in the complainant's bill of complaint, he, this respondent, was under the impression that the said James Latimer was solvent; but whether he was in flourishing circumstances, and ready and willing to pay the funds in his hands over to the complainant, or his order, and would have done so if he had not been prevented by said attachments, he cannot say, further than the said Latimer told the respondent that he had received authority from the complainant to do so if the attachments were withdrawn, as is alleged in said bill of complaint; nor can he admit that the said suits were procrastinated by this respondent and his trustees, and the said executors of John Nixon, deceased; and he expressly declares not either of the parties to the said suits respectively, had any concern with, control over, or in any way impeded the other suit; nor that the money or proceeds of said ginseng might have been forced out of the hands of said Latimer, as is alleged in the said bill of complaint. The respondent admits, that in the summer of 1811, the said James Latimer failed, and soon after made an assignment for the benefit of his creditors; but he has no knowledge of the state of affairs of said Latimer; nor the precise date of his assignment, as he never saw the same; nor can he say whether the complainant sustained any loss by the failure of said Latimer, but this respondent undertakes to aver that he is legally advised that the complainant was at all times, by law, allowed to enter special bail and dissolve the attachment, and so release the funds in the hands of Latimer, and take away all excuse from him for not paying the same; or he might have satisfied the debts upon which the said attachments were founded, and if any loss has happened to the complainant, it is, as this respondent humbly conceives, imputable to the complainant himself alone, because he did not satisfy said debts, or enter bail and dissolve the attachments. And this defendant, further answering, says, that the said James Latimer has been frequently absent from the city of Philadelphia since his failure in 1811, to Europe and the East Indies, but that this city is his home. This respondent is utterly ignorant of the present circumstances of the said Latimer. And this defendant, further answering, says, that he does not admit, but does deny, that, by the laws of Pennsylvania, either he, this defendant, or the said executors, or the said trustees, or any of them, made themselves responsible to the complainant, by suing out said attachments, for any loss sustained by the complainant in consequence of the failure of said Latimer, or that by the same laws they are further responsible

to the complainant for any loss he may incur by the failure under the circumstances stated in said bill of complaint, or that the said attachments were illegal in their commencement, as alleged in said bill of complaint. And this respondent does expressly that any transfer was ever made to him by the said Thomas M. Willing and Henry Nixon, executors as aforesaid, of the said note, as stated and alleged in the complainant's bill of complaint; and does aver that the said notes still remain in the hands of said executors, and that this respondent has no interest in them, for that, after satisfying the object for which they were originally given to John Nixon, they become, by assignment of this respondent, the property of his assignees, in trust of his creditors. And he further says, that said notes have never been in his hands nor under his control since they were first delivered by him to the said John Nixon; and that, if any such suit has been commenced thereon in his name, it has been without his knowledge or consent, as authority may legally have been given by his transfer thereof to said John Nixon; and further, he does not know nor admit, that, if a balance was struck on equitable principles, he, the said West, and the said executors and trustees, would fall in debt to the complainant, as alleged in the said bill of complaint. And the defendant does deny all and all manner of combination and confederacy with any person or persons whatever. Without that any other matter or thing in the complainant's bill of complaint contained material for the defendants to make answer unto, and not herein and hereby sufficiently answered unto, confessed or denied, is true to the knowledge and belief of this defendant. All which this respondent is ready to aver, maintain, and as this honorable court shall award, and prays to be herein dismissed with his reasonable costs and charges in this behalf most wrongfully and unjustly sustained, &c.

Francis West, the defendant in the foregoing answer, being sworn according to law, saith that the several matters and things contained in his said answer, so far as they relate to matters of his own knowledge, are true, and so far as they relate to other matters he believes them to be true.

FRANCIS WEST.

Sworn to the 19th day of October, A. D. 1819, before me.

RICHARD PETERS,

One of the Judges of the U. S. circuit court for the Penn. Dist.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the year last aforesaid, (until which time this cause was continued,) came the complainant, and filed the following exceptions to West's answer, to wit:

BRASHEAR *vs.* WEST, &c.—*Exceptions.*

The complainant says that the answer of the defendant West is insufficient and defective in this, to wit: first, the defendant has not answered touching the correctness of the account referred to and filed by the amended bill, neither admitting or denying or expressing his belief in that respect; 2d, he has not said if the proceeds or the sang was in the hand of Latimer at the time of the issuing of the attachment, whether it was shipped with the knowledge and approbation of the defendants, or any of them, or if they had power, made an effort to obtain security from Latimer, or to withdraw the article, or shewn why it was not done.

JA. HAGGIN.

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And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, and year aforesaid, in the month of September, came the complainant, and gave defendant Lapseley a rule to answer.

And afterwards, to wit, at rules held in the month of October following, came again the complainant, and, on his motion, the bill is taken for confessed as to the defendants Mifflin, Nixon, and Lapseley, and this cause is set for hearing as to all the defendants.

And afterwards, to wit, at the November term of the court aforesaid, in the year eighteen hundred and twenty-one, came Francis West, by his counsel, and filed his amended answer herein; which amended answer is as follows, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Francis West, a defendant named in the bill of complaint of Walter Brashear, to the amended bill of said complainant. This defendant, saving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said amended bill, for answer thereto, or so much thereof as he is advised is material for him to make answer unto, he answers and says: that the only knowledge he has of the account A, filed with and referred to in the amended bill of the complainant, is, that, in July, 1810, Henry Nixon shewed to this defendant an account of sales and an account current, which he understood said Nixon had received from James Latimer; that this respondent took copies of said accounts, one of which he retained, and the other he sent, on the twenty-sixth day of July, eighteen hundred and ten, to the complainant, by mail; that a copy of the account sales retained by this defendant corresponds with marked A, referred to in the amended bill, and the account hereto annexed, marked N B, is a just, true, and full copy of the account current retained by this defendant; that this defendant does not know nor admit that the said account marked N, before referred to, is a correct account of the ginseng and money in the hands of Latimer when the attachment issued; that *if* he had no knowledge of the actual sales of said ginseng, although he had understood said Latimer, at various times, that he should take it afterwards, that he had taken it to his own account, and has seen different accounts thereof, made out by said Latimer. That the account marked A purports to be an account of sales of said ginseng by said Latimer to himself; and the proceeds of said sales are credited to the complainant in the account current by the said Latimer, of which a copy is hereto annexed; from which account current, if the same be correct, it appears that the balance in favor of the complainant, or the amount in the hands of Latimer at the time the attachments issued, was four thousand nine hundred and *eighty*-five dollars twenty-three cents; but this respondent does not know and cannot admit that the said accounts are correct, and therefore he prays that, if it be material, the complainant may be required to make full proof thereof. The defendant, further answering, says, that he never assented to nor encouraged the exportation of the ginseng, nor does he know or believe that any of the defendants ever assented or encouraged said exportation; that he understood from the said Latimer that he had taken it to his own account before the attachment was laid by the executors of John Nixon; and also, that, before the attachment was laid, the said Latimer had himself issued an attachment, which he had caused to be levied in his own hands, and which was returnable to the March term, 1809, and in which a judgment was entered in October, 1809.

This defendant, further answering, says, that he does expressly deny that the attachment issued by the executor of John Nixon was levied, or any proceedings had therein under the advise or procurement, or with the participation of the respondent. He further says, that he does not know nor believe that the plaintiff in said attachment had power to obtain any security from Latimer, or to withdraw the funds of property from his hands, because he has understood and believes, that, according to the laws of Pennsylvania, no such power or authority in the plaintiff in attachment exists.

FRANCIS WEST.

Francis West, the respondent above named, being duly sworn according to law, on his oath saith, that the several matters and things contained in the foregoing answer, so far as they relate to his own knowledge, are true, and all matters therein he believes to be true.

FRANCIS WEST.

Sworn the 14th day of November, A. D. 1821, before me,

RICHARD PETERS,

Judge of the Penn. district of the U. S. executing jurisdiction in the eastern district of Pennsylvania.

EXHIBIT A. B.

Dr. *Walter Brashear in account with James Latimer.* **Cr.**

1809					
Jan. 17	To cash paid carriage of ginseng from Pittsburg, -		77 59	By proceeds, per account sales	
"	" " costs of suit, - - -		31 18	annexed, - - -	11,861 95
21	" " carriage of ginseng, - -		53 82		
31	" " Mr. ——— - - -		87 92		
"	" my two notes, dated 5th Jan. 1809:				
	1, 6 months, for	3,672 78			
	1, 6 "	1,938 06			
			5,610 84		
Feb. 2	To cash paid carriage ginseng from Pittsburg, -		49 07		
3	" cash - - - - - - -		123 82		
Mar. 18	" cash paid G. Bryan on account ginseng, -		223 33		
April 3	" " " " -		130		
May 6	" damages on your bills - - -		369 45		
	" freight 57 barrels from N. Orleans, - -		119 70		
	balance, - - - - - -		4,985 23		
			$11,861 95		$11,861 95

Interest amount to be settled hereafter, and costs of suit, &c. &c.

J. L.

This is an exhibit (A B) referred to in my answer.

FRAN. WEST.

And afterwards, to wit, on the 7th day of December, 1821, came S. Mifflin and John Lapseley, and filed their answer herein, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Samuel Mifflin and John Lapseley, two of the defendants named in the bill of complaint of Walter Brashear. These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the manifest errors and insufficiencies in the complainant's said bill contained, for answer thereto, or to so much thereof as these defendants are advised is material for them to make answer unto, they answer and say: that they believe and admit to be true, as is charged in said bill of complaint, that the complainant made and delivered to Francis West two promissory notes, dated the 28th day of February, eighteen hundred payable to Francis West or order, fifteen months after date; one of them for three thousand five hundred and twenty-seven dollars eighty-one cents, in the whole, seven thousand and fifty-five dollars sixty three cents; that the said West, on or about the first day of April, eighteen hundred and seven, did endorse the said notes to John Nixon, and deliver them to him, as collateral security for a debt owing by said West to said Nixon; that the said John Nixon afterwards died, and Thomas M. Willing and Henry Nixon have acted as his executors; that, on or about the twenty- day of April, eighteen hundred and seven, the said Francis West did assign, convey, and transfer to these respondents *and Henry Nixon* all his estate and effects, in trust for the payment of his debts in the order and manner And these respondents further answer and say, that, if the particulars of the transaction between the complainant and James Latimer, called Henry Latimer in the bill of complaint, by mistake, as they suppose, these respondents are ignorant, save that they have been informed that upon a statement of account by the said James Latimer, dated July 20, 1810, there appeared to be a balance due from said Latimer to the complainant, on the first of October, 1809, of four thousand nine hundred and eighty-five dollars twenty-three cents; that they have been informed that Francis West did, on or about the 3d day of November, 1808, long after his assignment to these respondents and Henry Nixon, receive from a certain William Bush the sum of one hundred and twenty-three dollars, as mentioned in the bill of complaint; but the respondents deny that the said sum of money so received by said West ever came to the hands of these respondents as trustees of said West; that they have been informed that the complainant did, at some time, become special bail for the said Francis West, in a suit brought by George Anderson, but of the proceedings in said suit these respondents are wholly ignorant, and therefore cannot admit the allegations in the complainant's bill of complaint concerning the same; and these respondents further answer and say, that true it is that the executors of John Nixon, deceased, did sue out a foreign attachment from the court of common pleas for the city and county of Philadelphia, to the term of December, in the year 1809, upon the notes given as aforesaid by the complainant to the said West, and by said West endorsed to said John Nixon; which attachment was against the complainant and James Latimer as garnishee; and, also, that these respondents, together with Henry Nixon, as assignee of Francis West, did cause a foreign attachment in the name of Francis West to their to issue from the same court, returnable to the term of June, in the same year, against the said complainant, to recover the balance of account due from him to the said West at the

time of the assignment made by said West as before mentioned, in trust for his creditors; which balance was acknowledged to be due by the complainant, being the sum of two thousand one hundred and forty dollars and seventy-six cents, of which account and acknowledgment a true copy is hereto annexed, and which these respondents pray may be taken as part of their answer. That the said attachment was served on James Latimer as garnishee, and such proceedings were afterwards duly had in said suit; that judgment was entered for the *complainant* on the 20th day of January, in the year 1810, as of the December term, 1809, agreeably to the laws of the Commonwealth; and that these respondents do expressly deny that there was any under procrastination of said legal proceedings. And these respondents, further answering, say, that they do not admit that, at the time they caused the attachment to issue as aforesaid to the said James Latimer, was, as is alleged by the complainant, in solvent circumstances, or that he was willing to pay the funds to the complainant, or to his order, or that he would have done so if he had not been precluded by said attachment; and farther, that they cannot admit that said Latimer and continued in the circumstances stated in the bill of complaint; and do expressly deny that there was any procrastination of said suits, or any contention between the said executors and trustees which prevented the receiving of the money or funds from said Latimer; that true it is, as your respondents are informed and believe, that said James Latimer did, on or about the 29th day of August, 1811, make an assignment of his property in trust for his creditors; and that the said Latimer has been frequently absent from the city of Philadelphia since that time, upon *sufficient* commercial enterprises, and is now absent upon a voyage to Canton; but as to his present circumstances, the respondent is ignorant. And these respondents, further answering, do deny that, by the laws of Pennsylvania, they have made themselves responsible to the complainant by suing out the said attachment for any loss sustained by him in consequence of the failure of said Latimer; and do also deny that, by the same laws, they are further responsible to the complainant for any loss he may incur by the said failure, by reason of the said notes being given to the said West in the city of Philadelphia, and the residence of the complainant in Kentucky; and do also deny that the said attachments were illegal at their commencement, or have been illegal in any stage of their prosecution; and they do aver that the said attachment was by them well and legally and duly sued out and prosecuted, and that the complainant might, by the laws of Pennsylvania, as they are advised, have dissolved the said attachment at any time by the putting in of special bail to the action, and thus relieved the funds in the hands of said Latimer, or might at any time have relieved said funds by paying the just debts upon which the said attachment issued; and that, in as much as the complainant has not paid said debts, nor put in bail to the said suits, he cannot, either by law, or according to equity or good conscience, charge these respondents with any loss whatever as having been occasioned by the issuing said attachments and further, the respondents say they have no knowledge of any transfer of said notes by said executors to said West, nor of any proceeding thereon at law, as stated and alleged in the complainant's bill of complaint; but these respondents do deny all and all manner of combination and confederacy with any person or persons whatever. Without that any other matter or thing in the complainant's bill of complaint contained, material for the defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, or avoid-

ed, is true to the knowledge and belief of this respondent. All which these respondents are ready to aver, maintain, and prove, as this honorable court shall award; and pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully and unjustly sustained.

SAMUEL MIFFLIN.
JOHN LAPSELEY.

Samuel Mifflin and John Lapseley being sworn according to law, declare and say that the matters contained in the foregoing answer, so far as concerns their own acts and deeds, is true of their own knowledge, and that what relates to the acts and deeds of any other person or persons, they believe to be true.

SAMUEL MIFFLIN.
JOHN LAPSELEY.

Sworn to the 4th day of November, A. D. 1817.

RICHARD PETERS,
Judge of the U. S. for the district of Pennsylvania.

Dr. *Walter Brashear in account with Francis West.* Cr

1805.			1806.		
Nov'r 30	To amount of sundry goods sent by Thomas Barr - -	$3,963 87	Feb.	By cash received of him this month on account—	
	To an error in extending 141 blue good prints, 226 for 340 yards, difference 114 yards at ½ 17*l.* 6*s.*	46 87		Say 17, - - 2,000 00 21, - - 2,000 00 26, - - 2,000 00 28, - - 2,000 00	
	To pieces carpeting, 144½ yards at 9*s.* 6*d.*, and 4 coverlets at 33*s.* 9*d.* - - - -	187 53			$8,000 00
Dec'r 12	To cash paid George Gibson, carriage of 11 barrels ginseng from Pittsburg - - -	41 52			
13	To cash paid John Henderson, carriage of 32 barrels from Pittsburg - - - 104 97 Moses Spowle, carriage of 12 casks and 1 bag - 56 67	161 64			
16	To cash paid Hugh McCartney, carriage of 15 casks of ginseng from Pittsburg - - -	37 84			
17	To cash paid George Wilson, carriage of 13 casks and 1 bag 56 25 Adam Smith, carriage 13 casks 2 bags - - 57 02	113 27			
26	To cash paid Jos. Howard, carriage from Wheeling 18 casks -	58 65			

81

91

1805.			1806.		
Dec'r 27	To cash paid Bernd. McManns, carriage 18 casks from Wheeling - - - - -	$57 64	March 5	By cash received from him -	$1,000 00
				By cash, nett proceeds of Lewis Classing's note and interest $1,676 35 - - -	1,662 94
28	To cash paid Daniel Danville, for carriage from Wheeling 37 casks	102 28	27	By cash from him - -	300 00
31	To cash, postage of letter from Dennis Brashear and W. Gibson, with receipt for ginseng -	1 10	31	By cash, nett proceeds of Lewis Clapeir's note and interest $1,600	1,590 68
1806.			April 12	By sundry goods from him -	3,040 07
January 9	To cash paid John Peterkeifer for 22 casks from Wheeling -	90 44	30	Lapsely and Skin for Jos. Coppinger's two bills of 70*l.* Irish sterling, equal to 64*l.* 12*s.* 4*d.* at par	287 18
17	To cash paid John Wayle, hauling 2 loads from Wheeling - -	123 77		By L. Classir's note 1st March, at 3 months, due ¼ - -	4,425 45
21	To cash paid George Manning, hauling 2 loads from Wheeling - - - 74 09			By do. at 4 months, ¼ July -	4,425 45
	John Mayes, hauling 1 load from Wheeling - 92 47			By do. at 5 months, ¼ August -	4,348 95
		166 56	May 7	By his check on bank U. S. America - - - - -	123 69
26	To cash paid John Glendering on account, hauling 1 load from Wheeling - - -	80 00	12	Jos. Winter's acceptance paid this day - - - - -	1,212 50
			June 25	By cash per mail from T. and R. Barr on his account - -	500 00
27	To cash paid his bill at 60 days in favor of Annesley and Hill -	200 00	Aug. 6	By cash from, per mail - -	700 00
Feb'ry 1	To cash paid Jos. Keller, hauling 1 load ginseng from Wheeling - - - 88 16		18	By cash from T. and R. Barr on his account - - -	500 00
	Do. Jacob Keller, do. - 50 00				
		138 16			

15	To cash paid John Flenaman, hauling 2 loads from Wheeling Short paid - - -		4 83
18	To cash paid himself - -		1,500 00
22	To do. - - - -		40 00
25	To do. paid James Ecles, hauling load ginseng from Wheeling -		75 91
26	To cash paid himself, 2 checks -		420 00
	To cash paid Bazil Wiggins, hauling one load from Wheeling -		57 50
	To cash paid himself - -		30 00
29	To cash paid himself in 2 checks -		700 00
28	To postage of letters this month -		1 35
March 3	To cash paid Dichiel, paid for a notarial copy of Andrew Porter, p'd note - - -		1 25
30	To cash paid him this month,		
	3, - - -	55 00	
	6, - - -	100 00	
	8, - - -	200 00	
	12, - - -	500 00	
	15, - - -	1,044 75	
	19, - - -	300 00	
			2,199 75
	To postage of letters from him to my care this month - -		4 97
April 3	To sundry goods, per bill - -		2,740 82
12	To my acceptance this day of his bill in favor of T. Beatty at goods - - - -		340 39

April	15	To cash paid R. Allen, hauling 12 barrels and keg ginseng by Pittsburg - - - - -	$36 15	Sept.	7	By Hart & Bartlett's bill, paid this day, remitted by T. & R. Barr on his account - - -	$1,000 00
	30	To cash paid him at sundry times this month,		Oct.	15	By cash per Th. T. Barr - -	1,046 85
		11, - - - 150 00		Nov.	19	By cash from T. & R. Barr -	230 00
		18, - - - 100 00			30	By 4 barrels crude ginseng, sold on 12th March last, 362 weight,	
		19, - - - 100 00				nett, at 38 cents - -	137 56
		21, - - - 30 00		1809.			
		22, - - - 50 00		Jan.	13	By cash, nett proceeds my acceptance 10th instant his bill at 90 days, $1,587 21 - -	1,518 37
		23, - - - 100 00					
		24, - - - 500 00			14	By do. nett proceeds do. 6th instant, at 90 days, for $1,632 12	1,560 72
		26, - - - 200 00					
		28, - - - 200 00			21	Do. nett proceeds do. 19th instant, at 90 days, for $1,700 09 -	1,628 10
		29, - - - 992 77					
		To this sum from Thomas Jones, paid on my account - -	120 00				
		To ½ piece cambric for handkerchiefs - - - -	6 90				
		To postage letters from him -	3 23				
		To 1 dozen white sheep skins, paid T. and P. Kelly - -	6 56				
May	31	To cash paid his drafts this month					
		1, To Isaac Smith - 23 96					
		6, Aaron Derman - 393 60					
		21, Saml. Reynolds - 95 41					
		29, Wm. Crawford - 173 19					
			3,057 60				

	To postage this month - -		1 25	
June 30	To cash paid his bills this month,			
	2, To Saml. G. Trotter	900 00		
	4, Corp. Ellis & Shaws	797 02		
	To Charles Ford -	363 29		
	9, Bazil Brashear -	463 67		
	10, Jos. Lippincott -	692 70		
	18, Jacob Justice & Co.	82 60		
	27, John Conyers -	401 00		
	28, Jacob Justice & Co.	1,000 00		
	3, His acceptance P. and Smiley's bill -	1,220 00		
	5, Dennis Brashear's bill	424 14		
			6,344 42	
	To postage this month - -		77	
July 31	2, To Simon Gratz & Co. - -	2,053 93		
	3, Corp. Ellis & Shaws	813 35		
	10, Jos. Lippincott -	692 70		
	18, Lapseley & Skin -	698 63		
	William Crawford -	500 00		
	19, Waddington & H. -	1,100 00		
	20, Simon Gratz & Co. -	773 17		
	21, John Auchinclops -	379 43		
	23, Isaac Smith -	2,358 35		
	25, James Latimer, jr. -	295 00		
	29, James Williamson -	179 35		
	Jacob Springer -	109 69		
			9,953 38	
	To postages this month - -		1 85	

Dr. ACCOUNT—Continued. Cr.

Aug.	31	To cash paid his bills this month,			Feb.	26	By cash received from him—	
		4, To John Dabadie - $311 56					7, - - - $1,580 00	
		11, John McCauley - 1,176 00					9, - - - 1,000 00	
		18, Cavender & Son - 1,216 16					11, - - - 2,500 00	
		19, James H. Cole - 276 83					12, - - - 2,200 00	
		20, Dendman & M. - 156 60					14, - - - 1,000 00	
		23, John McCartly - 1,100 27					16, - - - 1,000 00	
		" Samuel Meeker - 1,169 55					19, - - - 1,000 00	
		25, James Duvall - 894 36					23, - - - 370 00	
		26, Isaac C. Jones & Co. 338 61						10,650 00
		28, Meeker & Baldwin - 400 30					By nett amount of L. Clapir's note at 60 days, $1,500 - -	1,484 00
		" J. & P. Kelly - 216 81					By nett proceeds my acceptance 14th ult. of his bill at 90 days, for $1,632 12 - - -	1,583 00
		29, A. Henry & Co. - 520 22					By my bill 14th instant on William Gibson, favor G. Anderson, by his order - -	500 00
			7,771 26					
		To postage this month - -	2 31					
Sept.	19	To cash paid his bill in favor William Crawford - - -	572 00					
	30	To postages this month - -	52					
Oct.	25	To cash paid Thomas Bringharst on his account - - -	25 00					
	31	To cash paid his bills this month in favor,						
		19, W. & Harwood - 1,056 60						
		23, Samuel Meeker - 1,454 07						
		24, A. H. Inskeep - 263 40						
		27, Lapseley & Skin - 193 09						
		29, J. Justice & Co. - 1,879 81						
			4,846 97					

	31	To postage this month - -		1 01
Nov.	1	To sundry goods sent by Thomas T. Barr - - -		2,660 66
	2	To cash paid his bill at 15 days to Thomas Prather - -		750 00
	30	To sundry goods from Lapseley and Skin on my account, for his order to Charles Ford and Bazil Brashears, 26th February last -		104 77
Dec.	20	To cash paid James Henderson, carriage of 11 barrels ginseng from Wheeling - -		41 10
	31	To *postage* of ginseng received from N. Orleans in June, 1815, and hoisting in loft - 1 50		
		Do. sundry loads received in January and February last, from wagons to scales and back - - - 8 33		
		Weighing above, per Tenns and Annesley's account - 4 43		
		Hoisting ginseng received from wagons into the loft in winter and spring 1805 3 10		
		Do. received from do. in the last winter and spring 7 56		
				24 92
Jan.	31	To cash paid his bills—		
		4, Favor D. Lapseley - 426 75		
		7, John Evans - - 518 71		
		16, Thomas Prather - 439 00		
				1,384 46

Jan.	31	To postage this month - -	$1 04	March	31	By cash, nett proceeds of the following notes:	
Feb.	28	To cash paid hauling sundry loads from Wheeling—				12, S. Clapier's, 60 days, $1,500 - - - $1,484 25	
		3, James Mayes 1 load 120 51				14, Do. $3,000 - 2,894 00	
		7, John Week 2 do 139 02				23, His own note at 60 days, to John Nixon, $2,000 - - 1,978 67	
		" Irvin Howell 1 do 60 99					6,356 92
		11, Stephen Keifer 1 do 82 77				By R. H. Wilcox & Co. for 4,052 lbs. clarified ginseng, 23d May last, payable in 12 months, at 70 cents - - -	2,836 40
		" Jno. K. Garton 1 do 67 80					
		14, Peter Hartman 1 do 57 66					
		21, James Johnston 2 do 103 74					
		" Samuel Poole 2 do 130 97	763 46			By this sum settled with J. S. Duvall on my account - -	106 50
		To amount of goods per bill payable in 15 months - -	7,055 63	April	20	By his endorsement of my notes 19th ult. payable in 3 and 4 months to William Morton -	3,775 30
		To postage of letters for him, and from M. Keir - - -	1 25	1807.			
March	9	To cash paid John Ray, carriage of 9 barrels ginseng from Wheeling - - - -	32 56	April	21	By his two notes in favor F. West, dated 28th February, payable in fifteen months; the one for $3,527 81, and the other for $3,527 82 - - -	7,055 63
	23	To cash paid Batts at 3 days by his order, for same sum advanced in Batts to Mr. Yewell -	531 56			By F. West's note 13th March, 1807, payable in 60 days to Jacob Justice & Co. settled by W. Brashear - - -	897 30
	26	To cash paid him - - 100					
		Deduct this sum borrowed - 10	90 00			By this sum settled with John Allen, on my account, by said W. Brashear - - -	851 85
		To 20 Kentucky insurance, short, sold him this day, and ordered Thomas T. Barr to transfer to him, at 85 per share - -	1,700 00				

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28	To my bills of this date at 60 days, in his favor on James Wier 1,100 Martin Hawkins - 500	1,600 00
31	To postage of letters this month - To a water loan certificate transferred to him - - 100 00 Thomas Lieper's account 27th instant, 60 days - 111 50	211 50
April 9	To amount of my account against Dennis Brashear & Co., sold 5th April, 1806 - 3,799 26 Do. 1 more - - 2,570 93	6,370 19
20	To Hugh Cockran's account hoisting ginseng into the loft, storing, &c., in February last - 5 90 Porterage of goods 11th instant to Newcastle boat 1 92	7 82
1807. April 21	To 6 months interest on $3,799 26, amount goods sold Dennis Brashear & Co. on 5th April, 1806, transferred to this account -	113 97
	To two months interest on my two notes, endorsed and to be paid by him; the one due 22d June, and the other 22d July next ensuing, for $3,775 30; the average time 2½ months, at per annum - - - - -	47 19

DR. ACCOUNT—Continued. CR.

April 21	To 1 month's int'st on $3,836 40, credited 31st ult., but not due until 21st next month - -	$14 18	April 21	By 4 months interest on $1,100, charged 28th ult. but not received until 23d August -	$22 00	
	To balance of interest due on his account current, per particulars furnished - - -	346 95		3 month's interest on $611 50, cha'd at same time, and not received then - - -	9 17	
	To balance due by Walter Brashear & Co. per account this day transferred to this account - -	4,677 58		By balance due - - -		31 17
	To balance due per this day per contra, payable with interest -					2,140 76

PHILADELPHIA, *April* 21, 1807.

Errors and omissions excepted. FRANCIS WEST.

BARDSTOWN, KENTUCKY, *July* 13, 1808.

I acknowledge the above account to be correct; that I am justly indebted to Francis West in the sum of two thousand one hundred and forty dollars and seventy-six cents, as therein stated. WALTER BRASHEAR.

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In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Thomas M. Willing and Henry Nixon, executors of the last will and testament of John Nixon, deceased, defendants named in the bill of complaint of Walter Brashear, to the amended bill of said complainant. These defendants, now and at all times saving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said amended bill, for answer thereto, or so much as these defendants are advised is material for them to make answer unto, they answer and say: that they do not know or admit that the account marked (A), filed with and referred to in the amended bill of the complainant, is a correct account of the ginseng and money in the hands of Latimer when the attachment issued; that said account purports to be an account of sales of ginseng by James Latimer, on account of Walter Brashear, but whether it is a correct and true statement of such sales these respondents do not know or admit; and the respondent Henry Nixon saith that he thinks he obtained an account of the sales of said ginseng, and also an account current with the complainant, from said Latimer, some time in the year eighteen hundred and ten, but whether the account referred to in the said amended bill is the said account, or copy thereof, he cannot say, but that he verily believes the amount of said sale was carried to the credit of the complainant in the account current, which he thinks did not exceed five thousand dollars, was all that said Latimer admitted to be in his hands when the attachment issued. These defendants therefore pray that the complainant may be required, if it be material, to produce proof of said account, and also of the actual state of the account between the said complainant and the said James Latimer at the time when the attachment issued.

And further answering, these defendants say, that they do not admit, but do expressly deny, that, by the laws of the State of Pennsylvania, the plaintiffs in the attachment have any right or power to demand or obtain from the said Latimer any security for the forthcoming of property or funds in his hands, subject to the said attachment, agreeably to the final order of the said court, or to demand or obtain the withdrawal of the funds or property attached, and its safe deposite; and they also deny that any measures, other than those which were taken by them, could have been taken, by means of which the parties would have been saved from injury by the failure of Latimer: and they do aver that all reasonable and usual attention was bestowed by them in the matter of said attachment, and that they did not, in contempt or violation of any duty, permit the fund to remain subject to the management of said Latimer; and further, these respondents deny that they ever assented to or in any way or manner encouarged the exportation of said ginseng; and they do also deny that the attachment issued by them was levied, or any proceedings, had under the advice or by the procurement, or with the participation of Francis West, in any way or manner whatever, and they also deny that they have been guilty of any negligence in relation to the recovery of said money. Without that there is any other matter or thing in the said amended bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby, well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall award, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS M. WILLING,
HENRY NIXON.

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Thomas M. Willing and Henry Nixon, the respondents named above, being duly sworn according to law, on their oaths severally say, that the matters and things contained in the foregoing answer, so far as they relate to their own knowledge, are true, and all other matters therein they believe to be true.

THOMAS M. WILLING,
HENRY NIXON.

Sworn to the 15th day of November, A. D. 1821, before me.

RICHARD PETERS,
Judge Pennsylvania district United States.

Afterwards, to wit, on motion of the complainant aforesaid, by his counsel, leave is given him to file an amended bill herein, which is done accordingly, and by consent, this cause is to stand on the issue docket for trial; and it is ordered that the defendants answer on or before the first day of the next term of this court; and leave is given the parties to take depositions generally, in or out of the district, before any two justices of the peace, notary public, or mayor of any city, upon each giving to the other legal notice of the time and place of taking the same.

Which amended bill is in the words and figures following, to wit:

To the honorable the Judges of the circuit court, of the United States for the Kentucky district, in chancery sitting: humbly complaining sheweth, unto your honors your orator Walter Brashear, a citizen of the State of Kentucky, by way of amendment to his bill heretofore exhibited against Francis West and others.

That at the time when your orator became special bail of the defendant West, at the suit of Anderson, he had no knowledge of the assignment and delivery of his two notes, in the bill and proceedings mentioned, to John Nixon, nor of the general assignment made by the said West to Samuel Mifflin, John Lapseley, and Henry Nixon, referred to in these proceedings; and your orator charges that the said two notes were so assigned to the said John Nixon, to secure and indemnify him in a very considerable due from the said West to him, which your orator calls upon the said Nixon's executors to state, shew, and prove, and also to say whether they have any other, and what indemnity for it, whether it has not been paid; and your orator, charges that the said general assignment, made by the said West to the said Mifflin and others, is fraudulent and void; that it was made to defraud the creditors of the said West, to give undue advantage to some, to the prejudice of others of them. That, by the laws of Pennsylvania, the plaintiffs in the said attachment were authorized and bound to see that the money and effects attached in the hands of Latimer, were always in power of the officer levying the attachment, or to demand of the garnishee security for the production of the said money and effects, and that the plaintiffs altogether failed to require that the said money and effects should be so placed in the power of the said officer, or to demand from the garnishee, such security as aforesaid: and your orator further charges that the two notes charged in your orator in the account of James Latimer, and which is referred to in the answer of Fancis West as exhibit (A B), amounting together to $5,610 84, remain wholly unpaid, and have never been satisfied.

BIBB, HAGGIN, and CLAY.

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And afterwards, to wit, at the May term of the court aforesaid, in the year 1823, came the defendants, Samuel Mifflin, John Lapseley, and John Nixon, and filed their answers to the complainant's amended bill, to wit:

In the circuit court of the United States for the Kentucky district, in chancery. The answer of Samuel Mifflin, and John Lapsely, two of the assignees of Francis West, to the complaint of Walter Brashear, by way of amendment to his bill heretofore filed against Francis West and others. These defendants, reserving to themselves all benefit of exception to the said amendment of said bill, for answer thereunto, or so much thereof as they are advised they are bound to answer unto, they answer and say: that they do not admit, nor do not believe to be true, that, at the time when the complainant became special bail for the defendant West, at the suit of Anderson, he the said complainant, had no knowledge of the assignment and delivery of his two notes to John Nixon, nor of the general assignment made by said West to Henry Nixon and these defendants; that these defendants have understood, and verily believe, that the said notes of the complainant were assigned and delivered by the said Francis West to the said John Nixon, for the purpose of securing to the said John Nixon the payment of a debt, amounting to two thousand six hundred and sixteen dollars sixty-five cents, due from the said Francis West to the said John Nixon; and that the whole of the said debts, excepting the sum of five hundred and twenty dollars and fifty cents, received from his assignees, under his assignments, still remains due and unpaid; and that these respondents have no knowledge of any indemnity or security holden by the executor of said Nixon, or any other person, for the payment of said debt. Those respondents further answer and say, that the general assignment made by the said West to Henry Nixon and these respondents, and referred to in the said amended bill, were not fraudulent and void, were not made to defraud the creditors of said West, or any of them, or to give any undue advantage to some, to the prejudice of others of them, as is alleged by the complainant, but, on the contrary, as these respondents are advised by counsel, and verily believe, the said assignment was fair and legal in all its provisions, and in all respects a perfectly valid instrument, and has never been denied or questioned to be such in the State of Pennsylvania; and they do further answer and say, that they do not admit, but expressly deny, that, by the laws of Pennsylvania, the plaintiffs in the said attachments referred to in said amended bill were authorized and bound to see that the money or effects attached in the hands of Latimer were always in the power of the officer levying the attachment, and to demand of the garnishee security for the production of the said money and effects. And these respondents, further answering, say, that they are advised by counsel, and do verily believe, that there existed no right, power, or authority, by the laws of Pennsylvania, in the plaintiffs, to cause the money and effects so attached to be placed in the custody of the law, or withdraw the same from the hands of said Latimer, or to cause him, the said Latimer, to give security therefor; and these respondents further say, in answer to said amended bill, that they have been informed, and verily believe, that the two notes charged to the complainant, in the account of James Latimer, and referred to by the complainant in his amended bill, have been paid and satisfied by the said Latimer, and are now in his hands.

JOHN LAPSELEY.

Samuel Mifflin, one of the respondents, being duly sworn according to law, saith that the several matters and thing, written in the foregoing answer,

so far as they relate to his knowledge, are true, and so far as they relate to the knowledge of others, he believes them to be true.

SAMUEL MIFFLIN.

Sworn and subscribed to the 18th day of April, A. D. 1823, before me.

RICHARD PETERS,

Judge Pennsylvania district United States.

John Lapseley, one of the respondents, being duly sworn according to law, saith, that the several matters and things contained in the foregoing answer, so far as they relate to his own knowledge, are true, and so far as they relate to the knowledge of others he believes them to be true.

JOHN LAPSELEY.

Sworn and subscribed to the 22d day of April, A. D. 1823, before me.

RICHARD PETERS,

Judge of the Penn. Dist. U. S.

In the circuit court of the United States for the Kentucky district, in chancery. The answer of Henry Nixon, sole surviving executor of John Nixon, deceased, and one of the assignees of Francis West, to the complaint of Walter Brashear, by way of amendment to his bill heretofore exhibited against Francis West and others. This defendant, reserving to himself all benefit of exception to the said amendment of said bill, for answer thereunto, or to so much thereof as he is advised he is bound to answer unto, he answereth and sayeth: that he does not admit that, at the time when the complainant became special bail for the defendant West, at the suit of Anderson, he, the said complainant, had no knowledge of the assignment made by the said West to Samuel Mifflin, John Lapseley, and Henry Nixon; but he, this defendant, believes and avers, that, at the time when the complainant did well know that his said two notes had been assigned and delivered to John Nixon, and that Francis West had made his general assignment to Samuel Mifflin, John Lapseley, and Henry Nixon; and this respondent further saith, that the two notes of the said complainant, referred to as above, were assigned and delivered to John Nixon soon after they were drawn, and with the knowledge of the complainant, who was present at the time; that the said notes were assigned for the purpose of securing to the said John Nixon the payment of a debt, amounting to two thousand six hundred and sixteen dollars and sixty-five cents, due from the said Francis West to the said John Nixon, the whole of which, with the interest thereon, still remains due and unpaid, excepting the sum of five hundred and twenty dollars and fifty cents, received from his assignees under his assignment. And this respondent further says, that no other indemnity or security than this is holden by the estate of John Nixon for said debt, And this respondent further says, that the general assignment made by the said West to the said Mifflin and others, referred to in the said amended bill, is not fraudulent and void; that it was not made to defraud creditors of the said or to give any undue advantage to some, to the prejudice of others of them, that, by the laws of Pennsylvania, the plaintiffs in the said attachment mentioned were neither authorized nor bound to see that the money and effects attached in the hands of Latimer were always, or at any time, in the power of the officer levying the attachment, or to demand of the garnishee security for the production of the said money and effects; and this respondent is advised by counsel that there existed no right, power, or authority, by the laws of Pennsylvania, in the

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said plaintiffs, to cause the money and effects so attached to be placed in the custody of the law, or withdrawn from the hands of said Latimer, or to cause him, the said Latimer, to give any security therefor. And this respondent further saith, that the paper writings hereto, marked (A and B) are true copies of the original notes now in the hands of James Latimer, which this respondent has seen and compared with copies; that the said notes have been paid by Latimer, and fully satisfied, and are the same notes charged in James Latimer's accounts; that, as this respondent has been informed and believes, the said notes were given by said Latimer in payment of a debt of said Brashear, for whom the said Latimer was bail, and which payment was made by the instructions or with the knowledge or consent of said Brashear. This respondent further says, that the said notes he believes were paid at maturity, and that each payment is perfectly well known to said Brashear. This respondent further says, that, agreeably to an act of the General Assembly of the Commonwealth of Pennsylvania, which was in full force at the time the said two notes were given by the said Walter Brashear to Francis West, and by the said West assigned to John Nixon, and which remains in full force to this time, the said notes were holden by the endorser discharged by any claim of defalcation or set off by the drawer thereof, and the said endorser was entitled to recover against the drawer of such sums as on the face of said notes appear to be due.

HENRY NIXON.

Henry Nixon, the respondent in the foregoing answer, duly sworn according to law, saith, that the several matters and things contained in the said answer, so far as they relate to his own knowledge, are true, and so far as they relate to the knowledge of others he believes to be true.

HENRY NIXON.

Sworn and subscribed to the 22d day of April, A. D. 1823, before me.

RICHARD PETERS,
Judge of the Penn. Dist. U. S.

The following are the exhibits referred to in the foregoing answer, to wit:

(A.)

5—8 *July*, $3,672 78. PHILADELPHIA, *5th January*, 1809.

Dolls. $3,672 78.

Six months after date, I promise to pay, without defalcation, to the order of Joseph Slovan, thirty-six hundred seventy-two dollars seventy-eight cents, value received.

JAMES LATIMER.

No. 3,202.

Pay to the order of Mr. George Simpson.

(B.)

Dolls. 1,938 06. PHILADELPHIA, *5th January*, 1809.

Six months after date, I promise to pay, without defalcation, to the order of Joseph Slovan, nineteen hundred thirty-eight dollars and six cents, value received.

JAMES LATIMER.

Jos. SLOVAN, R. B. PENN. Re'd date.

In the circuit court of the United States for the Kentucky district, in chancery. The answer of Francis West to the complaint of Walter Brashear, by way of amendment to his bill heretofore exhibited against the said Francis West and others. This defendant, reserving to himself all benefit of exception to the said amendment of said bill, for answer thereto, or to so much thereof as he is advised he is bound to answer unto, he answers and says: that he does not admit that, at the time when the complainant became special bail for this defendant, at the suit of Anderson, he, the said complainant, had no knowledge of the assignment and delivery of his two notes to John Nixon, nor of the general assignment made by this respondent to Samuel Mifflin, John Lapseley, and Henry Nixon; but, on the contrary, this respondent avers and declares that the complainant did well know, at the time he entered said special bail, which was when this respondent was in Kentucky, in September and October, 1808, that said assignment to Samuel Mifflin, John Lapseley, and Henry Nixon, which was made in April, 1807; and that he, the complainant, did also well know that his said two notes had been assigned and delivered by this respondent to John Nixon, and that said complainant was, at the time of said assignment and delivery of said notes, and for time, before and after, living with the family and in the house of this respondent, and was actually and personally acquainted with the fact of said assignment. And this respondent further saith, the said two promissory notes of the complainant, dated at Philadelphia, the twenty-eighth day of February, 1807, payable without defalcation to the order of this respondent, the one for three thousand five hundred and twenty-seven dollars and eighty-two cents, another three thousand five hundred and twenty-seven dollars and eighty-one cents, each at fifteen months date, and making the sum of seven thousand and fifty-five dollars and sixty-three cents, were so assigned and delivered in the month of April, 1807, before this respondent's said general assignment to Mifflin and others, on the 21st of April, 1807, to John Nixon, who is since deceased, as a collateral security for a debt due by this respondent to said Nixon, amounting to two thousand six hundred and sixteen dollars and sixty-five cents, and that such assignment was made with the knowledge and approbation of said complainant; that this respondent has been informed that his said assignees have paid to said Nixon, or to his executors, five hundred twenty dollars and fifty cents, and no more, leaving a balance now due of two thousand and ninety-six dollars fifteen cents; and that this respondent has no knowledge of any indemnity or security of any other nature or kind holden by the executors of said Nixon, or any other person, for the payment of said debt. This respondent further says, that the general assignment made by him to Henry Nixon, John Lapseley, and Samuel Mifflin, and referred to in the said amended bill, was not fraudulent and void, was not made to defraud the creditors of this respondent or any of them, or to give any undue advantage to some, to the prejudice of others of them, as is alleged by the complainants; but, on the contrary, he avers and declares that the said assignment was fair and lawful in all its provisions, and in all respects a perfectly valid instrument, and has never been denied or questioned to be such in the State of Pennsylvania. And this respondent further answers and says, that he does not admit to be true, but does expressly deny, that, by the laws of Pennsylvania, the plaintiffs in the attachment referred to in the said amended bill, were authorized or bound to see that the money and effects attached in the hands of Latimer were always in the power of the officer levying the attachment, or to de-

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mand of the garnishee security for the production of the said money and effects. And he further says, that he has been informed and believes, that, in February, 1809, the said James Latimer caused an attachment to be levied at his own suit, in his own hands, as garnishee, against Doctor Brashear, and obtained judgment against it in October, 1809, and that the attachment at the suit of the executors of Nixon, and of the assignees of this respondent, said issued subsequently to the attachment of said Latimer.

And this respondent further says, that he, this respondent, has seen the two notes charged to the complainant in James Latimer's account, mentioned in said amended bill, in possession of said Latimer; and what he avers, informed, and verily believes the said notes were paid and satisfied by Latimer when they fell due.

FRANCIS WEST.

Francis West, the respondent in the foregoing answer, being duly sworn according to law, says that the several matters and things contained in his said answer, so far as they relate to his own knowledge, are true, and so far as they relate to the knowledge of others he believes they are true.

FRANCIS WEST.

Sworn and subscribed to the 23d day of April, A. D. 1823, before me.

RICHARD PETERS,
Judge of the Penn. Dist. U. S.

And afterwards, it is ordered by the court that this cause remain on the issue docket; and, on motion of the defendants aforesaid, by their counsel, it is ruled that the complainant reply to the answer of the defendants on or before the first day of August next.

And afterwards, to wit, at the November term of the court aforesaid, and in the year 1823, came the complainant by his counsel, and replies generally to the answer of Francis West, and on his motion this cause is continued until the next term.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, on motion of the complainant by his counsel, leave is given him to amend his bill, and also leave to take the deposition of Francis West, one of the defendants, before any two justices of the peace, or mayor of any city, subject, however, to all legal exceptions.

Which amended bill is in the words and figures following, to wit:

To the Honorable the Judges of the court of the United States for the seventh circuit Kentucky district, in chancery sitting:

Your complainant, Walter Brashear, as an amendment to his bill in chancery, now depending against Francis West and the executors of John Nixon and others, states, that he is informed, believes, and charges, that the said decedent, John Nixon, was, at the time the debt in his former bill mentioned was contracted with said Anderson, and secret partner of said Francis West, that said debt to Anderson arose and was contracted for and on account of, and during the partnership between said Francis West and said Nixon, and his representatives are consequently bound in law and equity to pay and satisfy your orator out of the estate and assets of said Nixon. The debt, interest, and cost, which your orator paid to said Anderson, as aforesaid, set forth in his former bill. Your orator states that his debt to said West was contracted before he became the special bail of said West, at the

suit of said Anderson; and that debt, so owing by your orator to said West, was one prominent inducement for your orator undertaking for said West as his bail, looking to the funds in his own hands as indemnity in case he should become ultimately responsible to said Anderson for said West.

Your orator does not know when the said partnership between the said West and the said Nixon commenced, nor when it terminated, but that the said Nixon was the father-in-law of said West; and he is induced to believe that said partnership existed at the time and before your orator's debt to the said West was contracted, and that the debt from your orator to the said West was a debt to the said partnership: that the assignment of the debt of your orator to said Nixon, whereupon and for which the executors of said Nixon attached your orator's property in the hands of said James Latimer, had been made to said Nixon in consequence of and by reason of partnership between said West and Nixon, and upon no other consideration which was valuable, but also connected with this other consideration, that said West had married the daughter of said Nixon, and therefore there was another strong inducement to said West to assign over a debt of your orator to said Nixon, as, by so doing, the said Nixon would be in effect a trustee for said West, and said Nixon would thereby be enabled to make a more ample provision for his daughter, the wife of said Francis West. And your orator is informed, believes, and further charges as fact, that the said West and his wife, the daughter of said Nixon, are now enjoying a large fund provided and settled on said West's wife by her father John Nixon, deceased. Your orator is informed that the executors of said John Nixon are in possession of the books of said Nixon, and that said books will enable said executors to state the fact of the interest had in the mercantile transactions of said West, and that the said books of said Nixon will exhibit the fact of a charge therein of Nixon's profits for goods, wares, and merchandise, sold by said West during the said secret partnership existing between said West and Nixon; and your orator well believes that the existence of and duration of said partnership between said West and Nixon is well known to said West and said executors of said John Nixon, and ascertainable by the inspection of their books and accounts, kept respectively by said West and by said decedent Nixon. He is informed and believes, that, when said West came to Kentucky, and at the time he was arrested at the suit of Anderson, and when your orator became his bail as aforesaid, he, the said West, came for the purpose of settling all the interests and concerns of said West and Nixon; and that, notwithstanding said West assigned over the debts and effects of said concern, yet he, the said West, continued to be and was the manager of said concern, and had full power and authority, by a written power of attorney from said Nixon or his executors, for so doing.

To the end that said defendants may answer all and singular the premises in this amended bill as fully and as particularly as if every suggestion herein contained was repeated by way of interrogatories, and especially that said Francis West and said executors of said John Nixon, deceased, may each set forth and say if said Nixon, deceased, and said West, were not partners in trade? when did that partnership commence? when did it end? was not the business transacted in the name of said Francis West alone, whilst said Nixon had no interest in the profits or losses, or in the profits of said business, so conducted in the name of said West alone? what was the nature and extent of said decedent's interest as to profit and loss in said business of said West? where did that interest of said decedent begin, and where did it cease?

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and why and wherefore, and by what arrangement did it cease? did not the books of said Nixon and of said West, both or one or the other, show a charge in favor of said Nixon, and against said West, for profits for goods, wares, and merchandise, sold by and under the control of said West? did not the said executors of said West know, or do they not believe from information which they believe to be correct, that said decedent Nixon was a secret partner of said West? did not the said debt to Anderson grow out of the said concerns of said partnership of said West and Nixon? had not said West a power of attorney or authority from said decedent, or from his executors, as before herein suggested? where is that power? and that the defendants be compelled to produce and show forth the original, or a copy of it, and to explain the nature and extent of that power, and from whom; and to the end that your orator may have such general relief in the premises as his case shall require, and as equity shall dictate, he prays that the defendants be compelled to answer this amended bill, &c.: and as in duty, &c.

HAGGIN and BIBB, *for complainants.*

May term, 1828. Sworn to in open court by Walter Brashear.
Attest, JOHN H. HANNA, *C. C. C. K. D.*

And afterwards, to wit: at the May term of the court aforesaid, in the year 1824, on motion of the complainant, it is ordered that an injunction be granted him, staying all further proceedings on a replevy bond, executed to the defendant West by said Walter Brashear and Robert R. Barr, bearing date the 19th day of March, 1822, in the penalty of $13,000, to be discharged by the payment of $6,537 39, with interest from day of March, 1822, till paid, and also a judgment in this court in favor of said West against said Brashear, for the sum of three thousand five hundred and twenty-seven dollars eighty-one cents, with interest from 28th May, 1808, till paid, and costs, be stayed until the matter can be heard in equity, upon said Brashear entering into bonds in the penalty of $10,000 each, with Thomas T. Barr and Robert R. Barr his security, conditioned according to law.

And afterwards, to wit, at the October term of the court aforesaid, in the year last aforesaid, on motion of the defendants, West, Lapseley and Mifflin, leave is given them to file their answers, which is done accordingly, and cause to remain on the issue docket; which answers are as follows, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Francis West, one of the defendants named in the bill of complaint of Walter Brashear to the further amended bill of said complainant.

This defendant, now and at all times saving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and insufficiences in the said complainant's further amended bill, for answer thereto, or so much as this defendant is advised is material for him to make answer unto, answers and says: that, early in the year one thousand eight hundred and four, John Nixon furnished this defendant with the sum of $6,200, or thereabouts, received at sundry times, to be employed in the purchase of goods at auction, with the agreement and understanding between them that the said John Nixon should have one half of the profits which should be made upon the sales of such goods; that the purchases of goods under this agreement then commenced, and continued until about the last of the year 1805, and said purchases were always for cash, and the arti-

oles purchased paid for: that in consequence of the uncertainty which attended the collection of debts made by sales of said goods, the said John Nixon agreed with this defendant to relinquish his interest in the profits, and in lieu thereof to charge this defendant with bank interest for the money so endorsed. That on the 1st of March, 1806, the said John furnished this defendant with an account of said interest, which amounted to eight hundred and seventy-five dollars and five cents, and with that sum he was credited by this defendant on his books on the 31st day of the same month, and the whole gain on the purchases and sales of said goods was carried to the credit of profit and loss on the books of this defendant. And this defendant saith, that, except the concern just stated, there never was any partnership, joint connexion, concern, or interest, in trade or business, by or between said Nixon and himself; and that the said John Nixon never had any other business whatever in any other part of the said business transactions or dealings of this defendant. And this defendant, further answering, saith, that the defendant's account with Jordon and Anderson, out of which arose the account with George Anderson, commenced in September, 1806, after the joint concern between the said John Nixon and this defendant, herein before stated, was fully closed, and he also says, that the said debt to Anderson did not grow out of the concern, or any of its transactions, and that the said John Nixon never had the smallest interest in or connexion with said debt, or with any transaction whatever between the said George Anderson and this defendant: and he further says, that the debt from complainant to defendant was not a debt to the said John Nixon and this defendant, or to the said joint concern between them, and that was not assigned to said Nixon by reason of said concern, as is alleged in the complainant's further amended bill, but that said debt was assigned to said Nixon upon the valuable and bona fide consideration already mentioned in this defendant's previous answers to the bill of complaint, and that wholly unconnected with any consideration or inducement arising out of the marriage connexion subsisting between the said John Nixon and this defendant. And this defendant, further answering, saith, that, in the spring or summer 1808, he was in Kentucky, and received from the said John Nixon a power of attorney to collect a debt owing from Hart and Bartlett, and *any* other debt from Hart and Bartlett, was originally due to this defendant, but had been assigned by him to said John Nixon; and the said power of attorney was sued out at the request of this defendant, in consequence of the refusal of the said debtors to settle with him without such authority from the said John Nixon; and it is recorded in Fayette county, in said State of Kentucky. And the said defendant, further answering, saith, that the paper writing hereto annexed marked (A), is a just, full, and true copy of the account of said John Nixon, taken from this defendant's books by himself; that the balance of said account, as it is there stated on said books, is two thousand four hundred and ninety-six dollars seventy-seven cents; that the difference between the balance and the sum stated by this defendant in his former answer to be due from the defendant to the said John Nixon, from *this*
That defendant in his former answer stated the balance according to the decision of the referees to whom the accounts were submitted, by which decision the balance was found to be $2,616 65 cents, on account of which was received from this defendant's assignees $520 50 cents, being the balance $2,096 15 cents, as stated in his former answer by this defendant. This defendant is unable to state in what particular the referees made the

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balance different from the balance on this defendant's books, but he believes it must have been by his disallowances of some item or items charged in his account, or some item or items not credited to the said John Nixon in said account. And this defendant, further answering, saith, that the complainant, in addition to the promissory notes given by him to this defendant, and by the defendant endorsed to the said John Nixon, amounting together to $7,055 63 cents, was indebted to this defendant in an admitted balance of account of $2,140 76 cents, as will appear by his account current, and acknowledgment of the complainant thereon, of which a copy is hereto annexed, marked (B), and which this defendant prays may be taken as part of this his answer; that the balance of said account so admitted remains justly due, with the interest thereon, and is of right belonging to and recoverable by this defendant's assignees; and if the said complainant has any just or equitable claim to an allowance of the amount alleged to be paid by him as the special bail of defendant to George Anderson, it ought to be made in the first instance out of the said admitted balance of account to the extent thereof, and against the said notes *only* the amount which may remain thereafter unpaid. And as to all and every other of the matters and things alleged in the said bill of complaint, this defendant saith, that, so far as he knows, or is informed or believes, that they are true. Without that, that any other matter or thing in the complainant's said further amended bill contained, material for the defendant to make answer, and not herein and hereby sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant. All which this defendant is ready to aver, maintain, and prove, as this honorable court shall award; and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

FRANCIS WEST.

Francis West, being duly sworn saith, that the matters contained in the foregoing answer, so far as it concerns his own acts and deeds, are true of his own knowledge, and that what relates to the acts and deeds of any other son or persons he believes to be true.

FRANCIS WEST.

Sworn to the 8th day of October, A. D. 1824, before me.

RICHARD PETERS,

One of the Judges Circuit Court U. S. District Pennsylvania.

EXHIBIT

Mr. John Nixon in

DR.

1803			
Sept. 27	To cash paid him - - - -		$100 00
1804			
May 17	1 piece 6-4 cambric muslin, figured -		8 40
31	sundry goods in February and April -		17 28
April 31	cash received by him on my account from Clem. Biddle, by order of Gen. Wilkinson		4,394 40
Sept. 30	cash paid taxes on his two tracts of land in Northumberland county, and half expenses there - - - - -		24 10
Dec. 31	1 piece furniture dimity - - 11 70		
1805			
May 11	23¾ yards princess stuff, from Jas. West 4 57		
			16 27
11	3 pair Angola worsted hose - -		3 30
June 8	James West, drawing deed of land, &c. -		7 75
8	cash paid for English cheese - -		6 00
Nov. 9	John Jordan, jr., bill on him at 10 days in my favor, settled with him in account -		475 62
30	1 piece brown Irish sheeting - -		9 01
Dec. 21	1 piece Irish linen, 1 piece do. - - -		48 38
1806			
Feb. 13	cash paid my note 12th December, at 60 days, to him on account - - -		2,000 00
27	Do. do. 26th December, do. -		2,200 00
May 24	Do. do. 20th January, do. -		2,000 00
June 30	2 pieces linen and 6 pairs Angola hose -		51 10
1807			
Jan'ry 5	cash paid him, loan of 29th ultimo - -		500 00
March 31	Sanderson's and White's bill at 60 days on N. Nuchincloss, of New York, accepted 12th instant, given to him on account - -		1,250 00
April 11	this sum due by Hart and Bartlett, and assigned to him - - - -		7,376 84
	Balance due J. N. -		2,496 77
			$22,984 69

A. 27

account with Francis West.

Cr.

1803				
Aug. 24	By cash from Samuel Paynter on his account -			$100 00
1804				
Jan'ry 31	Do. on account 21st - -		200	
	26th - -		1,000	
	30th - -		800	
				2,000 00
Feb. 29	Do. do. 6th - -		600	
	7th - -		1,600	
	27th - -		500	
	28th - -		1,500	
				4,200 00
May 31	Do. do. 3d - -		500	
	Do. do. 8th - -		1,000	
				1,500 00
July 31	Do. from him 3d, for sundries in February, April, and May		25 68	
	received on account, 27th -		1,000 00	
				1,025 68
Aug. 31	Do. do. 14th -		2,000 00	
	21st, balance of money received from C. B. account General Wilkinson,		1,394 40	
Dec. 31	error in charging this sum per contra, it being settled with J. West - - -			4 57
1806				
March 31	interest account, for amount of interest due to him on the money advanced me in 1804, per account dated and furnished 1st instant			873 05
Dec. 29	cash borrowed from him - - -			500 00
1807				
April 20	profit and loss for loans from him, September, October, and November, 1801 -		150 00	
	Do. in February and April, 1802 -		100 00	
	this sum paid by him in May, 1801, expenses of com. in bankruptcy case		375 89	
				625 89
	his following endorsements on my notes:			
	February 9th, 60 days -		1,250 00	
	16th, do. -		1,814 44	
	23d, do. -		1,000 00	
	March 2d, do. -		1,250 00	
	19th, do. -		1,250 00	
	April 16th, do. -		1,250 00	
				7,814 44
	my note 14th ult. given 60 days, to Jos. Smithson, in full Smithsons, Oates, and Rich's account for goods guarantied by said Nixon -			946 66
				$22,984 69

EXHIBIT

Walter Brashear in

Dr.

1805			
Nov. 30	To amount of sundry goods sent by Thomas T. Barr - - - - -		$3,963 74
	an error in extending 14 pieces blue ground prints, 226 for 340 yards, diff. 114 yards, at - - - £17 11 6		46 87
	2 pieces carpeting, 144 yards, at 9s. 6d. and 4 coverlets, 33s. 9d. - - -		187 53
Dec. 12	cash paid George Gibson, carriage of 11 bbls. ginseng from Pittsburg - - -		41 52
13	cash paid John Henderson, carriage 32 bbls. from Pittsburg - - $104 97		
	cash paid More Sprowle, carriage 12 bbls. from Pittsburg - 56 67		
			161 64
16	cash paid Hugh McCartney, carriage of 15 bbls. ginseng from Pittsburg - -		57 84
17	cash paid George Wilson, carriage 13 casks and bag - - - - $56 25		
	cash paid Adam Smith, carriage 13 casks and 2 bags - - - 57 02		
			113 27
26	cash paid Joseph Howard, carriage 18 casks from Wheeling - - - -		58 65
27	cash paid Barnard McManns, carriage 18 casks from Wheeling - - - -		57 64
28	cash paid Daniel Danville, balance of carriage from Wheeling on 37 casks - -		102 28
31	postage of letters from Dennis Brashear and W. Gibson with receipts for ginseng -		1 10
Jan'ry 9	cash paid Peter Keifer, freight on 22 casks from Wheeling - - -		90 44
17	cash paid John Wagle, hauling 2 loads from Wheeling - - - -		123 77
21	cash paid George Manning, hauling 1 load from Wheeling - - - -		74 09
	cash paid John Mayes hauling 1 load from Wheeling - - - -		92 47
26	cash paid John Glendenning, 1 from do. -		80 00
27	cash paid his bill at 60 days, favor Annesly and Hill - - - -		200 00
31	cash paid postage of letters from him, and of his brother's letters, with receipts for ginseng - - - - -		1 20

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B.

account with Francis West.

Cr.

1806			
February	By cash received from him this month:		
	17th, - - -	$2,000 00	
	21st, - - -	2,000 00	
	26th, - - -	2,000 00	
	28th, - - -	2,000 00	
			$8,000 00
March 5	cash received from him -	- -	1,000 00
17	Do. nett proceeds note and interest, - -	$1,676 38	1,662 94
27	cash from him - -	- -	300 00
31	Do. nett proceeds note at 60 days, - - -	$1,600 00	1,590 68
April 12	sundry goods from him -	- -	3,040 07
30	Lapseley and Skin for Joseph Coppinger 2 bills £70 Irish sterling, equal to £64 12s. 4d. at par - - -	- -	287 18

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EXHIBIT B—

Dr.

1805			
Feb. 1	To cash paid Joseph Keller, hauling 1 load ginseng from Wheeling - - $88 16		
	cash paid Jacob Keller, hauling 1 load from Wheeling - - - 50 00		
			$138 16
15	cash paid Joseph Flennman, hauling 26 bbls. from Wheeling, short paid - -		4 83
18	cash paid himself - - - -		1,500 00
22	Do. do. - - - -		40 00
25	cash paid James Eabs, hauling 1 load ginseng from Wheeling - - - -		75 91
1806			
Feb. 26	cash paid himself - - - -		420 00
	cash paid Basil Wiggons, hauling 1 load from Wheeling - - - -		57 50
	cash paid to himself - - -		30 00
27	cash paid in two checks - - -		700 00
28	postage of letters this month - -		1 35
March 3	cash paid N. Diehl, jr., per notarial copy, A. Porter's, junior, note - - -		1 25
31	cash paid him this month, to wit:		
	3d, - -	$55 00	
	6th, - -	100 00	
	8th, - -	200 00	
	12th, - -	500 00	
	15th, - -	1,044 75	
	19th, - -	300 00	
			2,199 75
	postage of letters from him to my care, this month - - - - -		4 97
April 13	sundry goods, per bill - - -		2,740 82
	my acceptance this day of his bill favor Irvin and Beatty - - - -		340 39
15	cash paid R. Allen hauling, 12 bbls. and 1 keg ginseng from Pittsburg - - -		36 15
30	cash paid him at sundry times this month		
	11th, - -	$150 00	
	18th, - -	100 00	
	19th, - -	100 00	
	21st, - -	30 00	
	22d, - -	50 00	
	23d, - -	200 00	
	24th, - -	500 00	
	26th, - -	200 00	
	28th, - -	200 00	
	29th, - -	992 77	
			2,522 77

Continued. 29

Cr.

1806				
April	30	By Lewis Dupier's note 1st March, due 1—4 June - -	$4,425 45	
		Lewis Dupeir's note 1st March, 4 m., 1—4 July -	4,425 45	
		Lewis Dupeir's note 1st March, due 5 m., 1—4 August -	4,348 95	
				$13,199 85
May	7	check on bank No. America - -		123 69
	12	Joseph Winter's acceptance, paid this day -		1,212 50
June	25	cash per mail from T. and R. Barr on his account - - - - -		500 00
Aug.	6	cash received from him per mail - -		710 00
	18	cash received from T. and R. Barr on his account - - - - -		500 00
Sept.	7	Hart and Bartlett's bill paid this day, remitted by T. and R. Barr on his account -		1,000 00
Oct.	25	cash per Thomas T. Barr - - -		1,046 85
Nov.	19	cash from T. and R. Barr - - -		230 00
	30	4 bbls. crude ginseng, sold 12th March last, 362 lbs. at 38 cts. - - -		137 56

EXHIBIT B—

Dr.

1806				
April	To this sum from Thomas Jones, paid on my account			$120 00
	½ ps. cambric for handkerchiefs			6 90
	postage of letters for him this month			6 90
	1 dozen white sheepskins, paid T. and B. Kelly			6 50
May 31	cash paid his drafts this month, viz:			
	1st instant, to Isaac Smith		$2,396 00	
	6th, Aaron Dinman		393 00	
	21st, Samuel Reynolds		95 41	
	29th, William Crawford		173 19	
				3,057 60
	postage this month			1 02
June 30	cash paid his bills this month, viz:			
	2d, to Samuel G. Trotter		$900 00	
	4th, Corp. Ellis, and Shaw		797 02	
	6th, Charles Ford		363 29	
	9th, Walter Brashear		463 67	
	10th, Joshua Lippincott		692 70	
	18th, Isaac Justice & Co.		82 60	
	27th, John Angers		401 00	
	2d, Jacob Justice & Co.		1,000 00	
				4,700 28
3	cash paid his acceptance of P. and Smiley's draft		$2,220 00	
5	cash paid his acceptance of Dennis Brashear and Co.'s bill		424 14	
				1,644 16
30	postage of letters this month			77
July 31	cash paid his bills this month—			
August	2d, to Simon Gratz & Co.		$2,053 93	
	3d, Corp. Ellis and Shaw		813 35	
	10th, Joshua Lippincott		692 70	
	18th, Lapseley		698 63	
	18th, William Crawford		500 00	
	19th, Waddington and Howard		1,100 00	
	21st, John Auchincloss		379 43	
	21st, Simon Gratz & Co.		773 17	
	23d, Isaac Smith		2,358 35	
	25th, James Latimer, jr.		295 00	
	29th, James Williamson		179 35	
	29th, Isaac Springer		109 67	
				9,953 58
	postages this month			1 85

Continued. 30

Cr.

1807				
Jan.	13	By cash nett proceeds my acceptance 10th instant his bills 90 days -	$1,587 21	$1,518 37
	14	cash nett proceeds my acceptance 14th inst. his bills 90 days - -	$1,632 12	1,560 72
	21	cash nett proceeds my acceptance 19th inst. his bills 90 days - -	$1,701 09	1,628 10
Feb.	26	cash received from him, viz:		
		7th, - - -	$1,580 00	
		9th, - - -	1,000 00	
		11th, - - -	2,500 00	
		12th, - - -	2,200 00	
		14th, - - -	1,000 00	
		16th, - - -	1,000 00	
		19th, - - -	1,000 00	
		23d, - - -	370 00	
				10,650 00
		cash nett amount L. Dapier's note 60 days - - -	$1,500 00	

EXHIBIT B—

Dr.

1806				
Aug. 31	To cash paid his bills this month—			
	4th, to John Dabadie -	$311 56		
	11th, John McCauly -	1,176 00		
	18th, Cavendar & Son -	1,216 16		
	19th, James H. Cole -	270 83		
	20th, Denman and Meeker	156 60		
	23d, John McCauley -	1,100 27		
	23d, Samuel Meeker -	1,169 55		
	25th, James S. Duvall -	894 36		
	26th, Isaac C. Jones & Co.	338 61		
	28th, Meeker and Baldwin	400 30		
	28th, T. & P. Kelly -	216 80		
	29th, Alexander Henry & Co.	520 22		
			7,771	26
	postage this month - - - -		2	31
Sept. 19	cash paid his bill favor William Crawford -		572	00
30	postage this month - - - -			52
Oct. 25	cash paid Thomas Bringhurst on his account		25	00
31	cash paid his bills this month, viz:			
	19th, to Waddington and Howard	$1,056 60		
	23d, Samuel Meeker -	1,454 07		
	24th, A. H. Inskeep -	263 40		
	37th, Lapseley and Ikin -	193 09		
	29th, Jacob Justice & Co.	1,879 81		
			4,846	97
	postage this month - - - -		1	01
Nov. 1	sundry goods sent by Thomas T. Barr -		2,660	66
2	cash paid his bill at 60 days, 15 days, to Thomas Prather - - - -		750	00
30	sundry goods from Lapseley and Ikin on my account, per his orders - - -		104	77
Dec. 20	cash paid James Henderson, carriage of 10 bls. ginseng from Wheeling - -		41	10
31	porterage of ginseng, received from New Orleans in June, 1805, and hoisting in loft -		1	50
	sundry loads received in January and February last from wagons to scales, and back -		8	33
Dec. 31	weighing the above per Tennes and Ansley's account - - - - -		4	43
	hauling ginseng received from wagons into loft in winter and spring 1805 -	$3 10		
1807	hauling ginseng last winter and spring	7 56		
Jan'ry 31			24	92
	cash paid his bills—			
	4th, favor David Lapseley -	$426 75		
	7th, John Evans -	518 71		
	16th, Thomas Prather	439 00		
			1,384	46
	postage this month - -		1	04

Continued. 31

Cr.

1807		
Feb. 26	By cash nett amount my acceptance 14th ultimo of his bill at 90 days - $1,632 12	$1,583 00
	my bill 14th instant on Wm. Gibson favor G. Anderson, per his order - - -	500 00
March 31	cash nett proceeds of the following notes:	
	12th, Lewis Dapier's, 60 days $1,500—1,484 25	
	14th, Do. do. 3,000—2,894 00	
	23d, his note at 60 days to John Nixon, - - 2,000—1,978 67	
		6,356 92
	By R. H. Wilcox & Co. for 4,052 lbs. clarified ginseng, 23d May last, payable in twelve months, at 70 cents - - -	2,836 40
	this sum settled with James H. Duval on my account - - - - -	106 50

EXHIBIT B—

Dr.

1807			
Feb. 28	To cash paid hauling sundry loads ginseng from Wheeling—		
	3d, John Mayes, 1 load -	$120 51	
	7th, John Week, 2 do. -	139 02	
	7th, Irvine Howell, 1 do. -	60 99	
	11th, Stephen Keifer, 1 do. -	82 77	
	11th, John Gorton, 1 do. -	67 80	
	14th, Peter Hartman, 1 do. -	57 66	
	21st, James Johnson, 2 do. -	103 74	
	21st, Samuel Poole, 2 do. -	130 97	
			$763 46
	amount of goods per bill, payable in 15 months - - - - -		7,055 63
	postage of letters from him and Mr. Kerr -		1 23
March 19	cash paid James Ray, carriage 9 bbls. of ginseng from Wheeling - - -		32 56
23	cash paid Batrell's bills at 3 days sight for the same sum advanced in Baltimore to Mr. Yewell - - - -		531 66
26	cash paid him - - -	$100	
	Deduct this sum borrowed some time past	10	
			90 00
26	To 20 Kentucky insurance st. sold this day, and ordered T. R. Barr to transfer to him, at 85 per share - - - -		1,700 00
28	my bills of this date at 60 days in his favor—		
	On James Wier - -	$1,100	
	Martin Hawkins - -	500	
			1,600 00
31	To postage of letters to him this month -		3 63
	water loan certificate transferred to him - - -	$100 00	
	Thomas Liepier's acceptance 27th instant at 60 days -	111 50	
			211 50
April 9	amount of my account against Dennis Brashear & Co., sold 5th April, 1806	$3,796 26	
	1st Nov. 1806	2,570 93	
			6,370 19
20	Hugh Cockran's account, hoisting ginseng into the loft, storing, &c. in Feb. last	$5 90	
	porterage of goods 11th instant, to New Castle boat - - -	1 92	
			7 82

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Continued.

Cr.

1807		
April 20	By his endorsements my notes 19th ultimo, payable in 3 and 4 months to William Morton - - - - -	$3,775 30
21	his two notes of favor of F. W., dated 28th February, payable in 15 months, the one for - - - $3,527 81	
	and the other for - - 3,527 82	
		7,055 63
	Francis West's note 13th March, 1807, payable in 60 days to Jacob Justice & Co., settled by Walter Brashear - - -	897 30
	this sum settled with John Allen on my account by said Brashear - - -	851 85

EXHIBIT B—

Dr.

1807		
April 20	To 6 months' interest on $3,799 26, amount goods sold D. Brashear & Co. and transferred to this account - - -	$113 97
	2½ months' interest on my two notes endorsed and to be paid by him on my two notes, the one due 22d June and the other the 22d July next ensuing, for $3,775 30, the average time 2½ months - - -	47 19
	one month's interest on $2,836 40, credited 31st ultimo, but not due until 21st next month - - - - -	14 18
	balance of interest due on his account current, particulars furnished - -	346 95
	balance due by Walter Brashear & Co. per account current, this day transferred to his account - - - - -	4,677 58
		$77,517 34
	balance due this day per contract, payable with interest - - - -	2,140 76

Philadelphia, *April* 21, 1807.

Errors and omissions excepted.

Copy. Signed, FRANCIS WEST.

Bardstown, Kentucky, *July* 13, 1808.

I acknowledge the above account to be correct, that I am justly indebted to Francis West in the sum of two thousand one hundred and forty dollars and seventy-six cents, as therein stated.

Signed, WALTER BRASHEAR.

In the circuit court of the United States for the district of Kentucky.

The answer of John Lapseley and Samuel Mifflin, defendants named in the bill of complaint of Walter Brashear, to the further amended bill of said complainant.

These defendants, now and at all times saving to themselves all and all manner of benefit and advantage of exception to the many errors, uncertainties, and insufficiencies in the said complainant's further amended bill, for answer thereto, or to so much as these defendants are advised is material for them to make answer unto, answer and say: that they have no knowledge, information, or belief, that any partnership ever existed between the said John Nixon and Francis West at any time, as is alleged in said amended bill, or that the said Nixon ever had any interest whatever, either in the debt from Francis West to George Anderson, or in the debt with Walter Brashear to the said Francis West, until he became interested in the latter debt by an assignment or endorsement of the notes of Walter Brashear to him, as security for a debt owing to the said Nixon by the said West; and as to

Continued. 33

Cr

1807 April 21	By 4 months' interest on $1,100, charged 28th ultimo, but not received until 23d August - - - - $22 00 3 months' interest on $611 50, charged at same time, and not received then 9 71	$31 17
	Balance due - -	2,140 76
		$77,517 34

the several other matters and things alleged in the said further amended bill, the defendants say that they have no knowledge, belief, or information, that they are true; without that there is any other matter or thing in the said further amended bill of complaint contained, material or necessary for the defendants to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, or denied, is true. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall award; and humbly pray to be hence dismissed, with their costs and charges in this behalf most wrongfully sustained.

JOHN LAPSELEY.
SAMUEL MIFFLIN.

John Lapseley, one of the defendants abovenamed, being duly sworn, saith, that the several matters and things stated in the foregoing answer, as he verily believes, are true.

JOHN LAPSELEY.

Sworn to the 27th day of August, A. D. 1824, before me.

RICHARD PETERS,
Judge Pennsylvania district United States.

Samuel Mifflin, one of the defendants above named, being duly sworn, saith that the several matters and things stated in the foregoing answer are, as he verily believes, true.

SAMUEL MIFFLIN.

Sworn to the 24th day of August, A. D. 1824, before me.

RICHARD PETERS,
Judge Pennsylvania district U. S.

The following are exhibits filed in this cause, to wit:

Pleas at Philadelphia, before the Honorable Jacob Rush, Esquire, President, and his associate Judges, of the court of common pleas of Philadelphia county, of the term of June, in the year of our Lord one thousand eight hundred and nine.

Among other things, it is thus continued:

Francis West, to the use of Samuel Mifflin, John Lapseley, and Henry Nixon, his assignees in trust for his creditors, vs. *Walter Brashear.*

Be it remembered, that heretofore, to wit, on the 7th day of April, in the year of our Lord one thousand eight hundred and nine, the said plaintiffs by Charles Chauncery, Esq., their attorney, sued forth out of the said court the writ of the Commonwealth of Pennsylvania, of foreign attachment, to the Sheriff of Philadelphia county directed, in the words and of the tenor following, to wit:

PHILADELPHIA COUNTY, sct.—*The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:*

We command you that you attach Walter Brashear, late of your county, yeoman, by all and singular his goods and chattels, rights and credits, in whose hands or possession soever the same may be found, in your bailiwick, so that he be and appear before our Judges, at Philadelphia, at our court of common pleas, there to be held the first Monday of June next, to answer Francis West, to the use of Samuel Mifflin, John Lapseley, and Henry Nixon, his assignees in trust for his creditors, in a plea of trespass on the case &c., and have then there this writ. Witness, Jacob Rush, Esq., at Philadelphia, the 11th day of March, in the year of our Lord one thousand eight hundred and nine.

FREDERICK WALBERT, *Proth'y.*

At which said first Monday of June, in the year of our Lord one thousand eight hundred and nine, the return day of the before recited writ, come into court here the said plaintiffs by their said attorney, and the Sheriff of the county aforesaid, to wit, William T. Donaldson Esq., to whom the said recited writ was in form aforesaid directed, and makes return to the court here of the said writ, thereon endorsed, to wit:

April 7th, 1809, at 15 minutes past 5 o'clock P. M., attached all the goods wares, merchandise, moneys, credits and effects of the defendant, in the hands and possession of James Latimer, jr., and summoned him garnishee, to answer.

WILLIAM PEDGEON, *Deputy.*
William T. Donaldson, Sheriff.

And the said defendant does not come; thereupon further day is given the said defendant, until the third Monday of September next on which third Monday of September, it being the day of the month, in the year one thousand eight hundred and nine, the said plaintiffs, by their said attorney, come again into court, and the said defendant, although solemnly called comes not, and further day is given him, until the first Monday in December next; on which first Monday of December, it being the day of the month, in the year last aforesaid, the said plaintiff, by their said attorney, comes again into court, and the said defendant, although solemnly called, comes not; and

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now, in this present term of December, to wit, on the 20th day of January, in the year of our Lord one thousand eight hundred and ten, the said plaintiffs, by their said attorney, came again into court, and the said defendant, although solemnly called, comes not. And the said plaintiff, shewing to the court here that they have in all things complied with the directions of the act of Assembly of the Commonwealth of Pennsylvania, entitled "An act about attachments," it is therefore adjudged by the court here that the said plaintiffs do recover against the said Walter Brashear, the defendant, their damages by reason of the premises.

PHILADELPHIA COUNTY, sct.

I, John Porter, Prothonatory of the court of common pleas of Philadelphia county, do certify that the foregoing is a copy of the record and all the proceedings had in the above case, from the record of the said court.

In testimony whereof, I have hereto set my hand and affixed the seal of the said court, at Philadelphia, the 23d day of October, Anno Domini eighteen hundred and seventeen.

[L. S.] JOHN PORTER, *Proth'y.*

PENNSYLVANIA, PHILADELPHIA COUNTY, sct.

I, Jacob Rush Esq., President of the first judiciary district of the State of Pennsylvania, and presiding Judge of the court of common pleas, court of general quarter sessions of the peace, and orphans' court, in and for the county of Philadelphia, do certify that the foregoing record and attestations, made by John Porter, Esq., Prothonatory of the said court, is in due form. Witness my hand and seal, the 28th day of October, Anno Domini one thousand eight hundred and seventeen.

JACOB RUSH, [L. S.]

Pleas at Philadelphia, before the Honorable Joseph Hemphill, Esquire, President, and his assistant Judges, of the district court for the city and county of Philadelphia, of the term of September, in the year of our Lord one thousand eight hundred and eleven.

Among other things, it is thus continued:

Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, against James Latimer, garnishee of Walter Brashear.

Be it remembered, that on the thirteenth day of June, in the year of our Lord one thousand eight hundred and seven, the plaintiff, by William Lewis, Esq., his attorney, sued out a precept of the Commonwealth of Pennsylvania, commonly called a writ of scire facias against a garnishee, in the words following, to wit:

PHILADELPHIA COUNTY, sct.—*The Commonwealth of Pennsylvania, to the Sheriff of Philadelphia county, greeting:*

Whereas, by our writ, we lately commanded you should attach Walter Brashear, late of your bailiwick, yeoman, by all and singular his goods and chattels, rights and credits, whatsoever or wheresoever the same might be found in your bailiwick, so that he should be and appear before our Justices at Philadelphia, at our county court of common pleas, there to be held,

the first Monday of December then next, to answer Henry Nixon and Thomas Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c., upon which said writ you then returned that you had attached all the moneys, goods, and effects of the said Walter Brashear, in the hands and possession of James Latimer, and it was proceeded in such manner in our said court that the said Henry and Thomas, executors as aforesaid in our said court, were adjudged for their damages which they sustained as well by occasion of the nonperformance of a certain promise and assumption by the said Walter to the said John Nixon in his lifetime, at Philadelphia, in your county, made, as for their costs and charges by them about their suit in this behalf expended, whereof the said Walter Brashear was convict, as appears of record, &c; and whereas the said Henry and Thomas, executors as aforseaid, praying that a convenient remedy for the recovery thereof in the hands of James Latimer may be had, and we being willing those things which are rightly done in our court be executed, we do command you, that by honest and lawful men of your bailiwick, you make known to the said James Latimer that he be and appear before our Justices, at Philadelphia, at our district court for the city and county of Philadelphia, there to be held the first Monday of December next, to shew if any thing he has or knows to say, why the aforesaid Henry and Thomas, executors as aforesaid, their execution for the damages aforesaid, of the proper goods and chattels of the said Walter Brashear, in the hands of him the said James Latimer being, ought not to have; and have you there the names of those persons by whom you shall make it known to him, and this writ.

Witness Joseph Hemphill, Esq., at Philadelphia, the 8th day of June, in the year of our Lord one thousand eight hundred and eleven.

JOHN PORTER.

Upon which said first Monday of September, the sheriff of Philadelphia county, namely, Francis Johnson, Esq., made return that, on the 2d day of July, in the year aforesaid.

HENRY NIXON and THOMAS M. WILLING, executors of the will of JOHN NIXON, who was endorsee of FRANCIS WEST,
vs.
JAMES LATIMER, garnishee of WALTER BRASHEAR.

September term, A. D. 1811, scire facias against garnishee.

"Summoned." September term, 1811, continued; December term, A. D. 1811, continued; March, June, September, and December terms, 1812, continued; March, June, September, and December terms, A. D. 1813, continued; March, June, September, and December terms, A. D. 1814, continued; March, June, September, and December terms, A. D. 1815, continued; March, June, September, and December terms, A. D. 1816, continued; March, June, September, and December terms, A. D. 1817, continued.

PHILADELPHIA COUNTY AND CITY, sct.

I, Timothy Mattack, prothonatory of the district court for the county of Philadelphia, do certify that the above contains a true transcript of the record of all the proceedings in the above case, wherein Henry Nixon and

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Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, are plaintiffs, against James Latimer, garnishee of Walter Brashear, defendant; aud that the same exhibits the state of the action as it now remains on the docket of said court.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Philadelphia, the *sixth* day of May, in the year of our Lord one thousand eight hundred and eighteen.

T. MATTACK, *P. D. C.*

PENNSYLVANIA, PHILADELPHIA CITY AND COUNTY, sct.

I, Joseph Hemphill, Esq., President of the district court of the city and county of Philadelphia, do certify, that the within record and attestation, made by Timothy Mattack, Esq., prothonatory of said court, whose name is thereto subscribed, and seal of office affixed, is in due form, and made by the proper officer.

In testimony whereof, I have hereto set my hand, the sixth day of May, in the year of our Lord one thousand eight hundred and eighteen.

JOSEPH HEMPHILL.

PHILADELPHIA CITY AND COUNTY, sct.

I, Timothy Mattack, prothonatory of the district court of the city and county of Philadelphia, do certify that the Honorable Joseph Hemphill, Esq., by whom the foregoing attestation is made, and who has thereto subscribed his name, was, at the time of so doing, and still is presiding Judge of the said district court, duly commissioned and qualified, to all whose acts as such full faith and credit is and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereto set my hand and affixed the seal of our said court, at Philadelphia, the 7th day of May, A. D. 1818.

[L. S.] T. MATTACK, *C. D. C.*

Pleas at Philadelphia before the honorable Jacob Rush, President, and his associate judges of the court of common pleas for the city and county of Philadelphia, of the term of June, in the year of our Lord, one thousand eight hundred and nine.

Among other things, it is

FRANCIS WEST, to the use of SAMUEL MIFFLIN, JOHN LAPSELEY, and HENRY NIXON, his assignees in trust for his creditors,
vs.
WALTER BRASHEAR.
} *Issue foreign attachment, case, bail* $1500.

Attach all goods, wares, and merchandise, rights, moneys, credits, and effects in the hands of James Latimer, jr., and summon him as garnishee.

CHS. CHANCERY, *att'y for plff's.*

April 7th, 1809.

To FREDERICK WALBERT,
Prothonatory of the court of common pleas.

Whereupon a writ of the Commonwealth of Pennsylvania of foreign attachment to the sheriff of the county of Philadelphia directed, issued forth, in the manner and form and of the tenor following, that is to say—

PHILADELPHIA COUNTY, sct.—*The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:*

We command you that you attach Walter Brashear, late of your county, yeoman, by all and singular his goods and chattels, rights and credits, in whose hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges at Philadelphia, at our county court of common pleas, there to be held the first Monday of June next, to answer Francis West to the use of Samuel Mifflin, John Lapseley, and Henry Nixon, his assignees in trust for his creditors, in a plea of trespass on the case, &c. and have you then there this writ.

Witness, Jacob Rush, Esq., at Philadelphia, the eleventh day of March, in the year of our Lord one thousand eight hundred and nine.

FRED. WALBERT, *Proth'y.*

Endorsed as follows, to wit: June, 1809.

FRANCIS WEST, to the use of SAMUEL MIFFLIN, JOHN LAPSELEY and HENRY NIXON, his assignees in trust for his creditors, *vs.* WALTER BRASHEAR. } *Foreign attachment, bail* $1500.

"Attach all goods, wares, and merchandise, rights, moneys, credits, and effects of the defendant, in the hands of James Latimer, jr.: summon him as garnishee."

CHANCERY, *for plffs.*

At which said first Monday of June, being the fifth day of the said month, in the year of our Lord one thousand eight hundred and nine, and the return day of the writ aforesaid, the sheriff of the county of Philadelphia, to whom the same was directed, to wit, William T. Donaldson, Esq., made return thereon, by endorsement upon the same, in the following words and figures, to wit: April 7th, 1809, at 15 minutes past 5 o'clock, P. M., attached all the goods, wares, and merchandise, moneys, credits, and effects of the defendants, in the hands of and possession of James Latimer, jr., and summoned him, garnishee, to answer.

WILLIAM PEDGEON, *Dep'y Sheriff.*
William T. Donaldson, Sheriff.

Docket Entry.

FRANCIS WEST to the use of SAMUEL MIFFLIN, JOHN LAPSELEY, and HENRY NIXON, his assignees in trust for his creditors, *vs.* WALTER BRASHEAR. *Exit, April* 7. } *Foreign attachment, case, bail* $1500. "*Attached and summoned.*"

Continued, September term, continued. January, 1810, judgment.

PHILADELPHIA COUNTY, sct.

I, Joseph B. Norbury, prothonatory of the court of common pleas of the city and county of Philadelphia, do certify that the foregoing contains a true copy of the process, writ of foreign attachment, sheriff's return, and docket

entries, in the above case; and that no further proceedings appears to have been had therein than is contained in the foregoing exemplification.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Philadelphia, the ninth day of May, A. D. eighteen hundred and eighteen.

JOS. B. NORBURY, *Proth'y.*

PENNSYLVANIA, PHILADELPHIA COUNTY, set.

I, Jacob Rush, Esq., President of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas, court of general quarter sessions of the peace, and orphans' court, for the city and county of Philadelphia, do certify that the foregoing attestation, made by Joseph B. Norbury, prothonotory of the said court of common pleas, is in due form, and made by the proper officer.

In testimony whereof, I have hereto set my hand, at Philadelphia, the eleventh day of May, A. D. eighteen hundred and eighteen.

JACOB RUSH.

PENNSYLVANIA, PHILADELPHIA COUNTY, set.

I, Joseph B. Norbury, Prothonotary of the court of common pleas for the city and county of Philadelphia, do certify that the Honorable Jacob Rush, by whom the within attestation is made, and who has thereto subscribed his name, was, at the time of doing so, and still is, President of the first judicial district of Pennsylvania, and presiding judge of the court of common pleas, court of general quarter sessions of the peace, and orphan's court, of the city and county of Philadelphia, duly commissioned and qualified, to all whose acts as such full faith and credit is and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Philadelphia, the eleventh day of May, Anno Domini eighteen hundred and eighteen.

[L. S.] JOS. B. NORBURY, *Prothonatory.*

This indenture, made the twenty-first day of April, in the year of our Lord one thousand eight hundred and seven, between Francis West, of the city of Philadelphia, merchant, of the one part, and Samuel Mifflin, John Lapseley, and Henry Nixon, all of the city of Philadelphia, merchants, of the other part. Whereas the said Francis West hath of late met with and suffered divers misfortunes in trade, and being at this time unable to pay and discharge his just debts, is desirous of conveying and assigning all his property for the benefit of his creditors, now this indenture witnesseth, that, for and in consideration of the premises, and of the sum of five shillings by the said Mifflin, Lapseley and Nixon, in hand paid to the said West, the receipt whereof is hereby acknowledged, he the said Francis West, hath granted, bargained and sold, assigned, transferred, and set over, and doth hereby grant, bargain, sell, assign, and set over, to the said Samuel Mifflin, John Lapseley, and Henry Nixon, their heirs and assigns, all his lands and tenements and hereditaments, goods, debts, chattels and effects, and all his estate, real and personal and mixed, wheresoever situate, and whatsoever nature or kind the same may be. To have and to hold the same to the said Samuel Mifflin, John Lapseley, and Henry Nixon, their heirs and assigns for ever. On trust, nevertheless, that the said Samuel Mifflin, John Lapseley, and Henry Nixon, or any two of them, as soon as conveniently may be sold,

sell and dispose of all the estate and property hereby conveyed as aforesaid, at public or at private sale, as to them or any two of them may seem meet, for such prices as can be obtained for the same, and shall, as soon as may be, collect, sue for, and recover all rights, credits, and debts due to the said Francis West, and out of the proceeds thereof shall pay and discharge, first, all sums of money borrowed from William McTun Biddle and George Eddy, trading under the firm of William M. Biddle and Company; secondly, all debts due from the said Francis West for cash advanced to and actually borrowed by him, and for all moneys paid, or which may hereafter be paid, by the said Samuel Mifflin, as special bail of a certain John Jordan, jun., in sundry causes in the supreme court of Pennsylvania, wherein the said John Jordan is defendant, the said Mifflin having become bail as aforesaid under a promise of indemnity from the said Francis West, the said debts to be paid in equal proportions; third, all debts due from the said Francis West on accommodation notes and bills of exchange loaned to him and discounted for the use, and endorsements made for his accommodation, whereon money has been raised for his use, the said debts to be paid in equal proportions; fourth, all other just debts due from the said Francis West to any person or persons whatsoever, the said debts to be paid in equal proportions: provided, nevertheless, that none of the above described creditors shall be entitled to receive any part or *individent* of the property hereby conveyed, or its proceeds, who shall within ninety days from the date hereof, sign and execute a full and complete release of all claims and demands upon the said Francis West, of any nature or sort whatsoever. And the said Samuel Mifflin, John Lapseley, and Henry Nixon, are hereby constituted and appointed the true and lawful attorneys of the said Francis West, for him and in his name to sell and convey the property hereby conveyed, to receive the purchase money, and to collect, sue for, recover, and receive all debts to him due, and execute every matter and thing necessary for the complete and due execution of trust hereby created. In witness whereof, the said parties have hereto set their hand and seals, the day and year first above written.

FRANCIS WEST, [SEAL.]
SAMUEL MIFFLIN, [SEAL.]
JOHN LAPSELEY, [SEAL.]
HENRY NIXON, [SEAL.]

Sealed and delivered in the presence of us

WILLIAM M. MAGOFFLIN,
JOSEPH T. BARTON.

On the twenty-second day of April, in the year eighteen hundred and seven, personally appeared before me, Robert Wharton Esq,. Mayor of the city of Philadelphia, the within named Francis West, being by me examined, acknowledged the within instrument of writing to be his act and deed, and desired the same might be recorded as such. Witness my hand and seal.

ROBERT WHARTON, [SEAL.]
Mayor of the City of Philadelphia.

Recorded this 27th day of April, 1807.

I, James Carson, Esq., Recorder of deeds, &c. for the city and county of Philadelphia, do certify the preceding writing to be a true copy of a certain instrument of writing remaining on record in my office, in deed book (E F) No. 26, page 409, &c.

In witness whereof, I have hereunto set my hand and seal of office, the 27th day of March, 1813.

[SEAL.] JAMES CARSON, *Recorder.*

Exhibit No. 1.

BARDSTOWN, *July 25th*, 1807.

DEAR SIR: By last mail I received your esteemed favor of the 30th June, for which you have my warmest thanks. I had with me a memorandum of the time the $2,000 became due, and made my arrangements accordingly; and I have no doubt you have this received the amount, through the hands of Nixon, Walker, and Co., to whom I requested Messrs. Thomas and Robert Barr to remit the money. It is truly alarming and distressing, to the mercantile part of our country particularly, that there exists so great a probability of war between Great Britain and ourselves: for myself, I am appalled. I know not what steps to take. I have made some contracts for produce, and intended to go largely into that business, but, on hearing of this business, I have desisted for a while, for further accounts at least, before I touch it again. Our country, it may be said, is running on with its products, so fine a season have we had; but should we become embroiled with England, it will avail us little, as we have but one outlet, which is so easily shut up. Nothing has so much excited and exasperated the mind of the western people, since they have called themselves independent, as this provoking outrage on our country and countrymen. Should it be necessary, I am persuaded you will find that the Kentuckians will muster among you in their full proportion. Please to tell Mr. H. Nixon I will answer his letter of the 24th by next mail: his of that date came to hand with yours of the 30th of June, same month. I shall take care that he will not be disappointed (for his friendship for me.) I am, with much respect, your most ob't humble servant,

WALTER BRASHEAR.

To JOHN NIXON, *Philadelphia.*

BARDSTOWN, *June 10th*, 1808.

RESPECTED SIR: I have now before me your letter of the 25th of May, which was a long time on the way, but might have been answered two mails since, had I not been absent in a neigboring county on both mail days. This circumstance, added to the extreme reluctance I felt in answering it, has detained this so long. Do not understand that I have any reluctance to communicate with you freely, but I knew I could not answer your letter in that way that was most desirable to you—the enclosure of a bill for a part or whole of the money due you. You speak of your expectation as to receipt of money from me, at the same time laying stress or the length of credit given by F. W. on the goods: I admit, sir, that the credit was long, nor was the price of the goods a short one. As to any accommodation rendered me on the score of that contract, I trust it will be placed behind the curtain, and that the question was not asked why the thing was done; for should it, and the answer given honestly, it be found that it was to render you, with other securities, perfectly satisfied as to the debt due by F. W. You reason rationally and charitably that I have had my proportion of disappointments; but still you think that something should have been done for you, inasmuch as I made positive assurances that money should be paid you. This promise I intended to com-

ply with, and the same obligation I consider myself under to every creditor I have. I trust, sir, I shall not be considered as lacking honor because I have not been able to comply with my mercantile engagements. Had you, sir, previous to the embargo, promised your friend in Madeira that, in all the month of August, you'd furnish him a ship load of flour or staves, would you think that that friend could justly accuse you of a want of sincerity, and unworthy of friendship? I leave for you to draw the parallel between the two cases. I should feel hurt sir, to the extreme, if a cause like this should change any favorable opinion you have been charitable enough to form of me. I should feel extremely mortified if a man on earth could point his finger to any act of my life, and say I had designedly deceived. I confess I feel chagrined that I am not able to comply with my mercantile engagements, but I have the consolation to reflect that I do not nor never did intend to wrong any man. I do not see at this time how I can pay my creditors if there is not an outlet for produce. I have a considerable quantity of ginseng, and other property, which cannot at any price be converted into money. I expect Mr. West will be down here in the course of two weeks: whatever can shall be done with him in your business.

Believe me, respectfully, your friend, and humble sev't,

WALTER BRASHEAR.

JOHN NIXON Esq.

PHILADELPHIA, *4th November*, 1809.

Dr. WALTER BRASHEAR, *Bardstown, Kentucky:*

SIR: From the correspondence of our testator, the late J. Nixon, Esq., we find that you are urged to make payment of your notes for $7,055 63 cents, in favor of Mr. West, and endorsed by him to Mr. Nixon for a valuable consideration. During Mr. Nixon's lifetime no remittances appear to have been made on account of these notes; of course the whole debt, with the accruing interest to the present time, is due to the estate we represent. Mr. West, since the death of Mr. Nixon, has stated that a remittance of ginseng had been made to Mr. J. Latimer, to this place, to provide in part for the payment of your notes, and also a balance of about $2,000 due his estate. The assignees, Messrs. Mifflin and Lapseley, on being informed of this remittance, laid an attachment in the hand of Latimer to secure their balance, which of course established their priority of payment, as their proceedings have taken place several months since. Finding a sum would remain with Mr. Latimer, after payment of their demand, nearly sufficient to discharge one of your notes, we attached the same for the benefit of Mr. Nixon's estate. As no provision has been made for the payment of one of your notes, you will oblige us by pointing out when we may expect its discharge; and to request that all remittances on account of your notes assigned to Mr. Nixon, may be made to us as his representatives. We think a direction from you to Mr. J. Latimer, to pay over the balance due on our ginseng on the attachment, would save you much interest, as many months must elapse before the law will possess either the assignees or us of our legal claims.

Respectfully, yours,

HENRY NIXON,
THOMAS M. MILLING.
Executors of Nixon.

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PHILADELPHIA, 21*st February*, 1810.

SIR: We beg leave to call your attention to the foregoing letter, and to state that your funds in Mr. Latimer's hands must lay without interest under the attachments until they are divided, unless you order him to pay over the same in the proportions that are due, first to Mr. West's assignees, for the balance of your account as settled with Mr. West when in Kentucky, of about $2,000, and what remains on the two notes in our possession, as stated in our letter of the 4th of November last, together $7,055 53.

We remain your obedient servants,

HENRY NIXON,
THOMAS M. WILLING,
Executors of J. Nixon

PHILADELPHIA, *January 4th*, 1812.

Dr. WALTER BRASHEAR:

SIR: It was our hope that before our departure for Kentucky, an arrangement would have been made by you with Mr. Latimer, which would have enabled us to have received from your effects in his hands the amount of your notes in our possession. In this expectation we were disappointed, being left to pursue our legal remedy under the attachment: judgment has been had, and the usual proceeding to compel Mr. Latimer to account for the amount in his hands belonging to you. Mr. Latimer has lately failed, and assigned all his property to pay his preferred creditors, in the first instance, to the extent of $80,000, and afterwards his general creditors, of which latter class you are one. It is believed his property will not do more than pay his preferred debts; of course, we cannot calculate on receiving any part of your debt from him, but must look to you for its discharge. You will therefore oblige us by pointing out your means of payment, and stating when we may expect it, as we are desirous of communicating to those interested some satisfactory information relative to the claim. We offered Mr. Latimer security if he would pay us the amount due you, which was declined on the ground of his being advised so to do. We believe it was not in his power to pay at the time, *his credit recollect* our anxiety to receive payment arose from a belief that your funds in his hands were insecure.

We remain,

HENRY NIXON,
THOMAS M. WILLING,
Executors of J. Nixon.

I certify that I have compared the above letters with the letter book of the executors of the late John Nixon, and that they are true copies extracted from the same.

R. ROWLAND.

PHILADELPHIA, *March 16th*, 1814.

PHILADELPHIA, *February 28th*, 1810.

Mr. F. WEST.

SIR: Your objections to the account furnished on behalf of the estate of J. Nixon have received our immediate attention, and we are pleased to find them so specified as to have no difficulty in our reply. The charge of profit on goods under the 28th of February, 1806, in the sum of $1,245 48 is taken from an account rendered by yourself; the entry in the hand writ-

ing of Mr. Nixon; its character, of course, cannot be changed without full proof of its being relinquished, of which there is no trace with us. The charge of rent was made with your approbation at the time, and appeared so moderate as to receive your consent as just one, which must be allowed. Copy of the account furnished Mr. Nixon to your assigns, with an endorsement on it by him to that effect—we had this account—you approved by letter before your departure for the western country, stating that you had made all the entries to correspond, excepting that of the rent. Nothing appears to be charged but what was paid after your failure in 1811 for your personal use: the balance due Mr. Nixon on that account has been raised by sundry debts and credits, which are explained by the continued account now enclosed you. Hart and Bartlett's debt having been recovered, the same is fully credited; they having been charged with the interest on their notes to Mr. Nixon, and credited with all the moneys received on their account. We shall use our best endeavors to from Dr. Brashear's effects in Mr. Latimer's hands sufficient to liquidate the balance of your account with the estate, and hand over to your assignees any sum received beyond the claim we represent; in the mean time, if your assignees were to withdraw all opposition to our receiving from Mr. Latimer the sum which we must ultimately recover under the attachment, the interest would be saved both to the Dr. and your estate.

We remain your obedient servants,

HENRY NIXON,
THOMAS M. WILLING,
Executors of J. Nixon.

Postscript to F. West's letter.

A small balance is due from Mr. Nixon's estate to Hart and Bartlett, of $103 63, which ought to be paid them, unless you have further claims on those gentlemen; and as Mr. Nixon has received a dividend on the borrowed money, of $520 50 on the sum of $1,041, the executors must look to the assignees for the balance of that demand, applying to the credit of the account whatever may be received on the notes Dr. Brashear lodged and assigned by you to Mr. Nixon, as a security for the amount due him.

PHILADELPHIA, *7th March*, 1810.

Messrs. LAPSELEY and MIFFLIN,
Assignees of F. West:

GENTLEMEN: Enclosed is our reply, under the 28th ult., to Mr. West's objections on the account of the late Mr. Nixon, as rendered his assignees. You will oblige us by considering our remarks, and withdrawing all opposition to our attachment on Dr. Brashear's property in the hands of Mr. Latimer. You certainly can demand of us settlement, and we must pay over to you any thing recovered beyond what will satisfy the just demands of Mr. Nixon's estate.

We remain yours, &c.

PHILADELPHIA, *June 24th*, 1811.

JAMES LATIMER, Esq.

DEAR SIR: Mr. Lewis informs us that you can now, with safety to yourself, pay into court the balance due to Mr. Brashear, and that the execu-

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tors of Mr. Nixon, by giving bond in the proper form, receive the amount under their judgment; this facility, however, rests with you to give or not, as you feel authorized. We are, respectfully, yours,

HENRY NIXON,
THO. M. WILLING,
Executors of J. Nixon, Esq.

PHILADELPHIA, *March 16th*, 1814.

I certify that I have compared the above letters with the letter book of the executors of the late John Nixon, and that they are true copies extracted from the same.

R. TOLAND.

SIRS: Your note of the 28th ult. was delivered to me this morning by Mr. Lapseley. The course you have again adopted confirms me in the opinion that it is the desire of the executors of Mr. Nixon to have my account settled between themselves and my assignees, to which I shall make no objection. Permit me, however, to remark, much disappointed an explanation could not have taken place between ourselves, as suggested to Mr. Nixon, before the present course was pursued.

I remain, respectfully, yours,

FRAN. WEST.

Messrs. HENRY NIXON and THOMAS M. WILLING.

DEAR SIR: I have suggested to Mr. West the propriety of a settlement of his account with the estate of your deceased father, by reference to men, as you propose; and, in reply, received from him the enclosed note, on which, as you will , he objects thereto, for reasons which he has not disclosed. I feel disposed to to your proposition to *remove* the money from the hands of Mr. Latimer, that it may be placed in a productive relation. This, I understand, may be done without prejudice to either party. Very respectfully, your obedient servant,

JOHN LAPSELEY.
March 29, 1821.

HENRY NIXON, Esquire.

DEAR SIR: I refer you to the annexed copy of my note, dated the 10th November last: the same motive existing, does not permit my concurring at present to the proposal of Mr. Nixon.

Very respectfully, yours,

FRAN. WEST.
March 27th, 1811.

To Mr. JOHN LAPSELEY.

I regret extremely, it is not in my power at this time to consent to the reference proposed by Mr. Willing: as soon as it be otherwise, you shall be informed. I require testimony at present not within my reach, to establish some points that I conceive material to a full understanding of existing differences, and which I hope you will excuse not being communicated to you at this time.

On searching the records of conveyances for the city and county of Philadelphia, I find an assignment on the record given by James Latimer, of the city of Philadelphia, merchant, to George Latimer, Esquire, and John Hollingsworth, the younger, merchant, both of said city, conveying all his lands, tenements, and hereditaments, bonds, bills, notes, and debts, of every kind, due or to become due, and all goods, wares, and merchandise, the proceeds thereof, and all adventures at sea, or at any place in the United States, belonging to him, or to which he is in any way interested or concerned with others, and all ships and vessels at sea or in port, owned by him in whole or in part; in trust, nevertheless, for the benefit of his creditors, as therein particularly mentioned and specified; and appointing his said assignees his attorneys, either jointly and severally, to do all acts that may be necessary to carry the said assignment into complete effect, to substitute an attorney or attorneys under them, and to revoke the same; which assignment is dated the 29th day of August, 1811, and recorded the 31st August, 1811, in Letter of Attorney book, (IC,) No. 1, page 126, &c.

Witness my hand and seal of office, this 17th day of April, 1818.

MATT. RANDALL, *Recorder.*

Sale of ginseng on account of Mr. Walter Brashear.

1809.		
May 31,	James Latimer, 6 months' credit, a quantity of ginseng in barrels:	
	717 lbs. clarified, at 50 cts. - - -	$358 50
	5,747 do. at 50 cts. - - -	2,873 50
	4,881 crude } 11,697 lbs. - - -	4,678 80
	6,816 do. }	
	19 barrels received in May, 1807, nett 1,497 lbs. at 30 cts. - - - - -	449 10
	And 7,809 lbs. clarified, at 45 cts. - -	3,514 05
		$11,873 95
	Charges:	
	Postages, storages, and turning out to weigh, $7 50	
	Weighing 225 cwt. at 26 cts. - - 4 50	
	——	12 00
	Proceeds - -	$11,861 95

PHILADELPHIA COUNTY, sc.

[L. S.] Among the rolls, records, and remembrances of the court of common pleas for the city and county of Philadelphia, in the term of March, Anno Domini 1809, before the Honorable Jacob Rush, President, and his associate Judges of the said court, appears the following writ of foreign attachment, issued by order of Benjamin Tilghman, Esquire, attorney for plaintiff, to wit:

PHILADELPHIA, sct.—*The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:*

We command you that you attach Walter Brashear, late of our county, yeoman, by all and singular his goods, chattels, rights, and credits, in whose

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hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges at Philadelphia county court of common pleas, there to be held the first Monday of March next, to answer James Latimer in a plea of trespass on the case, &c.; and have then there this writ. Witness Jacob Rush, Esquire, at Philadelphia, the tenth day of December, in the year of our Lord one thousand eight hundred and eight.

FRED. WALBERT.

Endorsed—

JAMES LATIMER, *vs.* WALTER BRASHEAR. } *29th March*, 1809. Foreign attachment: case, bail in $8,000. B. TILGHMAN, *P. Quer.*

Attach in the hands of James Latimer, and summon him as garnishee.

And now, the first Monday in March, in the year aforesaid, being the day on which said writ was made returnable, William T. Donaldson, Esquire, high sheriff of the city and county of Philadelphia, comes into court, and makes the following return, endorsed on the aforesaid writ, to him directed, to wit:

February 17th, 1809, at 55 minutes past 4 o'clock P. M., attached all and singular the goods and chattels, rights and credits, of the defendant, in the possession of James Latimer, and summoned him as garnishee.

WILLIAM T. DONALDSON, *Sheriff.*

G. C. SNYDER.

And now, the 9th day of October, Anno Domini 1809, by order of Benjamin Tilghman, Esq., attorney of plaintiffs, judgment entered for plaintiffs, agreeably to the directions of the act of Assembly in such case made and provided. By the court.

PHILADELPHIA COUNTY, sct.

I, Matthew Randall, prothonatory of the court of common pleas aforesaid, do hereby certify that the foregoing contains a true copy of the proceedings had in the case wherein James Latimer, plaintiff, and Walter Brashear, defendant, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Philadelphia, the 23d day of April, A. D. 1823.

MATTHEW RANDALL.

PHILADELPHIA COUNTY, sct.

I, John Hollowell, president of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas and court of general quarter sessions of the peace in and for the city and county of Philadelphia, do certify that the foregoing record and attestation made by Matthew Randall, Esq., prothonatory of the said court of common pleas, is in due form, and made by the proper officer. Witness my hand and seal, this 23d day of April, A. D. 1823.

JOHN HOLLOWELL, [L. S.]

On searching the records of conveyances for the city and county of Philadelphia, I find an assignment on the record given by James Latimer, of the city of Philadelphia, merchant, to George Latimer, Esquire, and John Hollingsworth, the younger, merchant, both of said city, conveying all his lands, tenements, and hereditaments, bonds, bills, notes, and debts, of every kind, due or to become due, and all goods, wares, and merchandise, the proceeds thereof, and all adventures at sea, or at any place in the United States, belonging to him, or to which he is in any way interested or concerned with others, and all ships and vessels at sea or in port, owned by him in whole or in part; in trust, nevertheless, for the benefit of his creditors, as therein particularly mentioned and specified; and appointing his said assignees his attorneys, either jointly and severally, to do all acts that may be necessary to carry the said assignment into complete effect, to substitute an attorney or attorneys under them, and to revoke the same; which assignment is dated the 29th day of August, 1811, and recorded the 31st August, 1811, in Letter of Attorney book, (1C,) No. 1, page 126, &c.

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	4,881 crude } 11,697 lbs. - - -	4,678 80
	6,816 do. }	
	19 barrels received in May, 1807, nett 1,497 lbs. at 30 cts. - - - - -	449 10
	And 7,809 lbs. clarified, at 45 cts. - -	3,514 05
		$11,873 95
	Charges:	
	Postages, storages, and turning out to weigh, $7 50	
	Weighing 225 cwt. at 26 cts. - - 4 50	
	——	12 00
	Proceeds - -	$11,861 95

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hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges at Philadelphia county court of common pleas, there to be held the first Monday of March next, to answer James Latimer in a plea of trespass on the case, &c.; and have then there this writ. Witness Jacob Rush, Esquire, at Philadelphia, the tenth day of December, in the year of our Lord one thousand eight hundred and eight.

FRED. WALBERT.

Endorsed—

JAMES LATIMER, *vs.* WALTER BRASHEAR. } *29th March*, 1809. Foreign attachment: case, bail in $8,000. B. TILGHMAN, *P. Quer.*

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February 17th, 1809, at 55 minutes past 4 o'clock P. M., attached all and singular the goods and chattels, rights and credits, of the defendant, in the possession of James Latimer, and summoned him as garnishee.

WILLIAM T. DONALDSON, *Sheriff.*

G. C. SNYDER.

And now, the 9th day of October, Anno Domini 1809, by order of Benjamin Tilghman, Esq., attorney of plaintiffs, judgment entered for plaintiffs, agreeably to the directions of the act of Assembly in such case made and provided. By the court.

PHILADELPHIA COUNTY, sct.

I, Matthew Randall, prothonatory of the court of common pleas aforesaid, do hereby certify that the foregoing contains a true copy of the proceedings had in the case wherein James Latimer, plaintiff, and Walter Brashear, defendant, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Philadelphia, the 23d day of April, A. D. 1823.

MATTHEW RANDALL.

PHILADELPHIA COUNTY, sct.

I, John Hollowell, president of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas and court of general quarter sessions of the peace in and for the city and county of Philadelphia, do certify that the foregoing record and attestation made by Matthew Randall, Esq., prothonatory of the said court of common pleas, is in due form, and made by the proper officer. Witness my hand and seal, this 23d day of April, A. D. 1823.

JOHN HOLLOWELL, [L. S.]

STATE OF KENTUCKY, *Fayette county*, sct.—*Pleas before the Honorable the Judges of the Fayette circuit court, at the court-house in Lexington, at the September term*, 1810, *and on the day of said term.*

GEORGE ANDERSON *against* WALTER BRASHEAR. } *On a scire facias, as special bail for Francis West.*

Be it remembered, that heretofore, to wit, on the thirteenth day of May, eighteen hundred and nine, the following scire facias issued herein, to wit:

The Commonwealth of Kentucky to the sheriff of Fayette county, greeting:

Whereas, at a court held for the circuit of Fayette, at the court-house in Lexington, on the 31st day of March, 1809, a certain George Anderson recovered against Francis West the sum of five thousand one hundred and ninety-eight dollars, to be by the payment of four thousand dollars, as well for his debt and damages, as also the sum of eleven dollars sixty-eight cents, which to the said Anderson in our said court was adjudged for his costs by him herein expended; and whereas, at a court held for the said circuit in the month of September, and year 1808, a certain Walter Brashear, of Nelson county, came into court, and undertook for the defendant, that, in case he should be cast in this suit, he shall satisfy and pay the costs and condemnation of the court, or render his body to the prison in execution for the same, or, on failure thereof, that he, the said Brashear would do it for him; nevertheless, the said West hath not paid to the said Anderson the said sum of four thousand dollars, nor any part thereof, nor rendered his body to prison in execution for the same, neither hath the said Brashear done it for him, as by the said Anderson we are informed, and whatever in our said court is rightly done should be duly executed, we therefore command you to make known to the said Brashear that he be before the Judges of our said court, at the court-house in Lexington, on the 3d day of our next June court, to show cause, if any he can, why the said George Anderson, execution for the daages aforesaid, should not have, if to him it seems expedient, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house this 13th day of May, 1809, and in the seventh year of the Commonwealth. THOMAS BODLEY.

On which the sheriff made the following return: "Not found."

"JOHN H. MORTON, *Sheriff.*"

And afterwards, at rules held for the circuit aforesaid, at the clerk's office of the Fayette circuit court for the month of June, and year 1809, it is ruled that an alias scire facias issue in this case, and that this cause be continued until the next rule day. At which time, to wit, at rules held for the month of August, and year last aforesaid, at the clerk's office aforesaid, this cause is continued until next court.

The following alias issued to September term, to wit:

The Commonwealth of Kentucky to the Sheriff of Fayette county, greeting:

Whereas, at a court held for the circuit of Fayette at the court-house in Lexington, on the 31st day of March, 1809, a certain George Anderson recovered against Francis West the sum of $5,198, to be discharged by the paymen- of $4,000, as well for his debt and damages, as also the sum of $11 68 cents,

which to the said Anderson, in our said court, was adjudged for his costs by him herein expended: and whereas, at a court held for the circuit aforesaid, in the month of September and year 1808, a certain Walter Brashear, of Nelson county, came into court, and undertook for the defendant, that, in case he shall be cast in this suit, he shall satisfy and pay the costs and condemnation of the court, or render his body to prison in execution for the same, or on failure thereof that he, the said Brashear, would do it for him; nevertheless, the said West hath not paid to the said Anderson the said sum of four thousand dollars, nor any part thereof, nor rendered his body to prison in execution for the same, neither hath the said Brashear done it for him, as by the said Anderson we are informed, and whatever in our said court is rightly done should be duly executed, we therefore again command you that you make known to the said Walter Brashear that he be before the judges of our Fayette circuit court, at the court house, in Lexington, on the 3d day of our next September term, to show cause, if any he can, why the said Anderson execution for the damages aforesaid against him should not have and prosecute, if to him it shall seem expedient, and further to do and abide what our said court shall in that behalf consider, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 4th day of August, 1809, and in the 8th year of the Commonwealth. THOMAS BODLEY.

On which the sheriff made the following return to wit. "Not found within my bailiwick. "WILLIAM R. MORTON, *D. S.*
"*For Samuel Blair, S. F. C.*"

And afterwards, at rules held at the clerk's office aforesaid for the months of September, October, November, and December, 1809, this cause is (successively) continued until the next rule day. And afterwards, at rules held at the clerk's office aforesaid for the month of January and year 1810, the defendant being solemnly called, and not appearing, on the motion of the plaintiff, by his attorney, it is ordered that judgment be entered for the plaintiff against the defendant, for the debt, damages, and costs, in the writ of scire facias mentioned, unless the said defendant shall appear at the next court and plead to issue. And afterwards, at rules held at the clerk's office aforesaid for the month of February and year last aforesaid, this cause is continued until the next court. And afterwards at a court, begun and held for the circuit aforesaid, at the court-house aforesaid, for the month of March, and year last aforesaid, and on the 16th day of said court, on motion of the defendant, it is ordered that the office judgment herein be set aside; and it is ordered that the sheriff's return herein be quashed, and that this suit be remanded to the rule docket. And afterwards, at rules held in the clerk's office aforesaid for the month of March and year 1810, this cause is ordered to be continued until the next rule day. And afterwards, at rules held in the clerk's office aforesaid for the month of April and year last aforesaid, it is ruled that an alias scire facias issue herein, returnable to the next court; and this cause is continued until the next rule day. And afterwards, under an act of Assembly, entitled "An act regulating proceedings in civil causes," &c., this cause is placed on the issue docket to June term, 1810.

The following scire facias issued to June term, to wit:

The Commonwealth of Kentucky to the Sheriff of Nelson county, greeting:

Whereas, at a court held for the circuit of Fayette, at the court-house in Lexington, on the 31st day of March, 1809, a certain George Anderson recovered against Francis West the sum of $5,198, to be discharged by the payment of $4,000, as well for his debt and damages as also the sum of $11 68, which to the said Anderson in our said court was adjudged for his costs by him expended; and whereas, at a court held for the circuit aforesaid, and month of September, and year 1808, a certain Walter Brashear, of Nelson county, came into court, and undertook for the defendant, that, in case he shall be cast in this suit, he shall satisfy and pay the costs and condemnation of the court, or render his body to prison in execution for the same, or, on failure thereof, that he, the said Brashear, would do it for him; nevertheless, the said West hath not paid to the said Anderson the said sum of $4,000, nor any part thereof, nor rendered his body to prison in execution for the same, neither hath the said Brashear done it for him, as by the said Anderson we are informed; and desirous that whatever in our said court is rightly done should be duly executed, we therefore again command you, that you make known to the said Walter Brashear that he be before the Judges of our Fayette circuit court, at the court-house in Lexington, on the third day of our next June term, to show cause, if any he can, why the said Anderson judgment and execution against him for the damages aforesaid should not have and prosecute, if to him it seem expedient, and further to do and abide what our said court shall in that behalf consider; and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house, this 4th day of April, 1810, and in the 10th year of this Commonwealth. THOS. BODLEY, *C. F. C. C.*

On which the sheriff made the following return, to wit: "Executed.

"JOHN D. STROTHER, *D. S.*

"*For Henry Miles, S. N. C.*"

"And afterwards, at a court begun and held for the circuit aforesaid, at the court-house aforesaid, for the month of June, and year 1810, ordered that this suit be continued until the next term.

And afterwards, to wit, at a court begun and held for the circuit aforesaid, at he court-house aforesaid, for the month of September, and year last aforsaid, and on the 17th day of said court, this day came the plaintiff, by his attorney; and the defendant, though solemnly called, came not, but made default. Therefore, it is considered by the court that the plaintiff have execution against the said defendant, as special bail for Francis West, for the sum of five thousand one hundred and ninety-eight dollars, to be discharged by the payment of four thousand dollars; and also eleven dollars and sixty-eight cents, the damages and costs in the scire facias mentioned; and also his costs herein expended; and the said defendant in mercy, &c.

And afterwards, to wit, on the 2d day of October, 1810, the following execution issued:

The Commonwealth of Kentucky to the Sheriff of Nelson county, greeting:

You are hereby commanded, that, of the estate of Walter Brashear, late of your bailiwick, you cause to be made five thousand one hundred and

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ninety-eight dollars, also eleven dollars and sixty-eight cents, the damages and costs in the scire facias mentioned, which George Anderson, late in our Fayette circuit court recovered against him as special bail for Francis West, for damages and costs; also, $6 10½ cents, which to the said Anderson in our said court was adjudged for his costs by him about his suit in this behalf expended, whereof the said Brashear is convict as appears to us of record, and that you have the same before the Judges, of our said court at the court-house in Lexington, on the 26th day of November next, to satisfy and pay the said Anderson his debt and costs aforesaid, and have then there this writ.

Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 2d day of October, 1810, and in the 19th year of the Commonwealth.

THOMAS BODLEY, *C. F. C. C.*

On which the sheriff made the following return, to wit:

This execution was levied on the defendant Brashear's estate, and proceedings stayed on account of the plaintiff's orders to the sheriff of Nelson county not to execute, which I herewith return to the office.

JOHN D. STROTHER, *D. S.*
For Henry Miller, S. N. C.

The following is the plaintiff's order aforesaid:

The sheriff of Nelson county will return the execution issued in my name against Walter Brashear for four thousand dollars and costs, &c., from the clerk's office of the Fayette circuit court, not executed, by my order.

GEORGE ANDERSON.

STATE OF KENTUCKY, FAYETTE CIRCUIT, sct.

I, William L. Pogue, deputy for Thomas Bodley, clerk of the court for the circuit aforesaid, do certify that the foregoing seven pages contain a full, true, and complete transcript of the records and proceedings in the case of Anderson against Brashear aforesaid.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said office to be affixed, this 26th day of May, 1818.

[L. S.] WM. L. POGUE, *D. C.*

STATE OF KENTUCKY, FAYETTE CIRCUIT, sct.—*Pleas before the Honorable, the Judges of our Fayette circuit court, at the court-house in Lexington, on the day of*

GEORGE ANDERSON, *plaintiff,*
against
WALTER BRASHEAR, *defendant.* } *In case.*

Be it remembered, that heretofore to wit, on the first day of October, one thousand eight hundred and eight, the following capias ad respondendum issued herein, in the words and figures following:

The Commonwealth of Kentucky to the Sheriff of Fayette county, greeting:

You are hereby commanded to take Francis West, if he be found within your bailiwick, and him safely keep, so that you have his body before the

Judges of our Fayette circuit, at the court-house in Lexington, on the 24th day of our present September court, to answer George Anderson of a plea of trespass on the case, damage $4,000, and have then there this writ.

Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 1st day of October, 1808, and in the 17th year of the Commonwealth.

THOMAS BODLEY.

Endorsed—Memorandum: Case. No bail unless ordered by a Judge.
CLAY, *P. Q.*

FAYETTE, sct.

Before me, a justice of the peace for said county, personally appeared George Anderson, and made oath that the within named defendant is justly indebted to him in the sum of twenty-five hundred dollars, or upwards; that the said defendant is about to depart this Commonwealth, and that he verily believes, unless he be held to bail, that this affiant will lose his debt. Certified the 1st October, 1808.

JOHN C. RICHARDSON.

The sheriff is directed to take bail in the sum of twenty-five hundred dollars. October 1st, 1808.

JOHN MONROE,
One of the circuit Judges for the State of Kentucky.

Upon which the sheriff made the following return, to wit:
Executed Thomas T. Barr—appearance.

JOHN H. MORTON, *Sheriff.*

The following is the bond returned with the foregoing, to wit:

Know all men by these presents, that we, Francis West and Thoms T. Barr, of the county of Fayette, and Commonwealth of Kentucky, are held and firmly bound unto John H. Morton, of the county of Fayette, in the sum of four thousand dollars, lawful money of Kentucky, to be paid to the said John H. Morton, or his certain attorney, his executors, administrators, or assigns, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents: sealed with our seals, and dated this 30th day of September, 1808.

The condition of the above obligation is such, that whereas George Anderson, plaintiff, hath sued out of the Fayette circuit court a writ of capias ad respondendum against the body of the above bound Francis West, defendant, in an action of trespass on the case, and bail ordered by a Judge for the sum of two thousand five hundred dollars; by virtue of which writ, John H. Morton, sheriff, hath arrested the body of the said Francis West, defendant; now, if the said Francis West do appear before the Judges on the 24th day of our present September term, then and there to answer to the said action, then the above obligation to be void, else to remain in full force.

FRANCIS WEST, [L. S.]
THOMAS T. BARR, [L. S.]

Teste, JOHN H. MORTON, *Sheriff.*

And afterwards, to wit, at a court begun and held for the circuit aforesaid, and on the 22d day of our September term, 1808, Walter Brashear, of Nelson county, came into court, and undertook for the defendant, that, in

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case he shall be cast in this suit, he shall satisfy and pay the costs and condemnation of the court, or render his body to prison in execution for the same, or, on failure thereof, the said Brashear will do it for him.

At rules held for the circuit aforesaid for the month of October, and year 1808, the plaintiff this day filed his declaration herein, which is in the words following, to wit:

FAYETTE CIRCUIT, sct.—

George Anderson complains of Francis West, in custody, &c., for that, whereas the said defendant, on the day of in the year of our Lord 180 , at , to wit, in the circuit aforesaid, was indebted to the said plaintiff in the sum of $4,500, for so much money had and received by the said defendant for and to the use of the plaintiff; and being so indebted, afterwards, to wit, on the same day and year aforesaid, at the circuit aforesaid, the said defendant assumed upon himself, and to the said plaintiff faithfully promised, well and truly to pay the said sum of money whenever after he should be thereunto required; and whereas, also, afterwards, to wit, on the same day and year last aforesaid, at the circuit aforesaid, the said defendant was indebted to the said plaintiff in the sum of $4,500, for so much money before that time paid, laid out, and expended, to and for the use of the said defendant, at his special instance and request; and being so indebted, the said defendant, afterwards, to wit, on the same day and year last aforesaid, assumed upon himself, and to the said plaintiff faithfully promised, well and truly to pay him the last mentioned sum of $4,500 whenever after he should be thereunto required; nevertheless, the said defendant, in no wise regarding his said several promises and assumpsits, but contriving and fraudulently intending the said plaintiff to deceive and defraud, the said several sums of money, or either of them, hath not paid, although afterwards, to wit, on the same day and year last aforesaid, and often after, at the circuit aforesaid, he was thereto requested, but the same to him to pay the said defendant hitherto hath altogether refused, and still doth refuse, to the damage of the plaintiff $4,600; and therefore he sues, &c.

CLAY, *P. Q.*

Pledges, { J. DOE, R. ROE.

The following account filed herein, to wit:

Dr. Francis West to George Anderson,

Aug. 21st, 1806.	To cash remitted to you from New Orleans,	$1,500 00
	To interest thereon.	
Feb'y 4, 1807.	To cash remitted to you by T. Hart & Bartlett,	1,000 00
	To interest thereon.	
Oct'ber 16, 1804.	To cash per receipt, - - -	495 31
April 9, 1805.	To John Jordan's bill of exchange on you, -	600 00
Aug. 12, 1805.	To cash to you by letter of this day, -	500 00
Nov. 19, 1805.	To cash to you by your letter of this day, -	300 00
	To interest on the several sums, &c.	

And afterwards, to wit, at rules held for the circuit aforesaid, and month of November, and year 1808, a rule is given the defendant to plead herein; and at rules held for the circuit aforesaid, and month of December, and year

Dr. *Mr. Walter Brashear in account with James Latimer.* Cr.

1809.					
Jan. 17	To cash paid carriage ginseng from Pittsburg - -		$77 59	By proceeds of a quantity of	
	To cash - - - - - - -		53 82	ginseng per sales - -	$11,861 95
	To cash, cost of suit, Newman *vs.* Brashear, and same *vs.* Latimer - - - - - -		31 18		
	To cash paid carriage ginseng from Pittsburg - -		57 92		
	To my two notes of 5th January, 1809, 1 at 6 months, $3,672 78, 1 6 do. $1,938 06, being the amount of debt and interest, Newman *vs.* Brashear, and 6 months interest thereon - - - - - -		5,610 84		
Feb. 2	To cash paid carriage ginseng from Pittsburg	$49 07			
3	Do do do	123 82			
			172 89		
Mar. 18	To cash paid Guy Bryan on account of	- 22 33			
	his charges on 36 times -	- 130 00			
			353 33		
	To cash paid freight 37 bbls. received from New Orleans, in August, 1808 - - - -		119 70		
	To cash paid damages on your bills, Newman *vs.* Brashear - - - - - - -		369 45		
	Balance - - - - - - -		4,985 23		
			$11,861 95		$11,861 95

E. Excepted.

Philadelphia, 1*st August*, 1811.
(Signed) JAMES LATIMER.

The foregoing is the copy of the account current referred to by James Latimer in his answer to interrogatories. Sworn to before me, October 5, 1822.

PETER LOHRA, *N. P.*

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Sales of ginseng for account of Mr. Walter Brashear.

Say 38 barrels 43 tierces, received from Mr. Gibson, of Pittsburg;
36 tierces, received from Guy Bryan, Philadelphia;
37 barrels, do New Orleans;
most of it started and repacked. JAMES LATIMER.
March, 1809.

717 lbs. clarified ginseng, at 50 - - - -		$358 50
7809 lbs. crude and some clarified, at 45 - - -		3,514 05
4881 lbs. crude ginseng, at 40 - - - - -		1,952 40
3159 lbs. } do do 40 - - - - -		1,263 60
3657 lbs. } 6816 lbs. do 40 - - - - -		1,462 80
		8,551 35
7547 lbs. clarified, in 57 barrels, at 50 - - -		2,873 50
		11,424 85
19 barrels received in May, 1807, nett 1497 lbs. at 30 -		449 10
		11,873 95
Charges—Porterage, storage, bringing out, weighing, &c. -		12 00
Nett proceeds, -		11,861 95

Errors excepted.

PHILADELPHIA, *August*, 1811.
(Signed) JAMES LATIMER.

The foregoing is the copy of account sales of ginseng, referred to by James Latimer in his answers to interrogatories. Sworn to before me, October 5, 1822. PETER LOHRA, *N. P.*

Copy of a note from Henry Nixon and Thomas M. Willing, executors of John Nixon, to James Latimer.

June 24th, 1811.

DEAR SIR: Mr. Lewis informs us that you can now with safety to yourself pay us the balance due to Mr. Brashear, and that the executors of Mr. Nixon, by giving bond in the proper form, can receive the amount under the judgment; this facility, however, rests with you to give or not as you feel authorized. We are, respectfully, yours,

HENRY NIXON,
THOMAS M. WILLING,
Executors of John Nixon.

JAMES LATIMER, Esquire, *Dock street.*

The foregoing is a copy of a document referred to by James Latimer in his answers to interrogatories. Sworn to before me, October 5, 1822.
PETER LOHRA, *Notary.*

BRASHEAR *vs.* LAPSELEY—*Interrogatories.*

1st. Were you able to pay Walter Brashear the sum due on the ginseng account at the time the attachments were served on you by the parties defendants, in this suit?

2d. Is the account as rendered by you to Francis West correct? and state the balance due Walter Brashear on that account?

3d. In what year did you make your assignment for the benefit of your creditors?

4th. In what was the ginseng attachment? and did or did not your circumstances materially change from severe adversity between the time of the attachments and your assignment?

5th. Have the parties who obtained judgement under the attachment ever to this day sued out an execution against you?

6th. Did the officer, when he attached the property, &c., require of you security for its forthcoming or not? if he did, assign the reasons if any, why the security was not given.

BRASHEAR, *vs.* EXECUTORS OF JOHN NIXON, } *Interrogatories on the part of the executors of John Nixon, to be proposed to James Latimer.*

1st. Was the attachment in either of the cases, to wit, that at the suit of the assignees of West, or that at the suit of the executors of John Nixon, laid upon any specific property, or was it generally upon whatever property might be in your hands?

2d. Did Dr. Brashear know that the said attachments had been laid soon after they were served, and how soon? and did he also know that they might be dissolved at any time by putting in special bail?

3d. Had you not been the special bail of Dr. Brashear in a suit wherein Thomas Newman was plaintiff? and had you not been compelled to pay the money, and to what amount? and were you or were you not remunerated therefor out of the proceeds of ginseng?

4th. Did or did you not inform Dr. Brashear, that, if special bail were entered, the attachment would be thereby dissolved, and that, if they were so dissolved, you would pay him the money which would be found due to him on the settlement of the account?

5th. Did or did not the executors of John Nixon, after judgment was obtained on their attachment give you notice, that, in the opinion of their counsel, you might safely pay, money into court? and did you not reply to it that you were advised otherwise by your counsel? and was this not in the month of June, 1811, and before your general assignment?

6th. Did you or did you not ship any part, and, if any, what part, of said ginseng to China? and, if yea, was it or was it not on your own account? and at what time was the result of said shipment known, and what was the result?

7th. Was or was not Dr. Brashear in the city of Philadelphia soon after the attachment was laid? and did he or did he not propose to raise them by entering special bail? and if he did so propose, what was the cause that prevented its being done?

8th. Was there or was there not any agreement, consent, or collusion between you and the executors of John Nixon, or the assignees of West, that the property or money attached should remain in your hands, should be shipped abroad, or should be used or disposed of in any way? or was there any consent on their part to any delay or procrastination of payment on your part? if there was, state it fully.

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9th. Was the sheriff, when he laid these attachments, or at any time, authorized by law to demand of you as garnishee any security for the forthcoming of the property, or the payment of the money into court? and was not every thing done by sheriff in the service of the attachment which by law could be done, so far as your knowledge extends?

10th. Was or was not the account current, or one of similiar import, attached to the account of sales which you furnished heretofore to Mr. Nixon or Mr. West, if you furnished any account to either of those gentlemen?

Deposition of a witness, produced, sworn, and examined on Saturday, the 28th day of September, A. D. 1822, at the house of Peter Lohra, Esq., notary public of the city of Philadelphia, by virtue of a writ of dedimus potestatum, issuing out of the circuit court of the United States in and for the Kentucky district, in a cause therein depending, between Walter Brashear, complainant, and John Lapseley and others, defendants.

James Latimer, of the city of Philadelphia, merchant, produced, sworn, and examined, on the part of the complainant Walter Brashear, deposeth and saith as follows, in answer to the interrogatories propounded on the part of the said Walter Brashear.

To the first interrogatory he answereth and saith: Up to the period, in August, 1811, when I made a general assignment, I met and paid my engagements. When the attachments referred to were laid, I was fully capable to pay any moneys due on the ginseng account, if any sum had been then due; but no moneys were then due to Walter Brashear on that account, because a part of the said ginseng was unsold, and the portion thereof sold was so sold upon a credit, which had not expired. The first moneys to come from the said sales were to be retained by me on account of about $5,000 paid me as special bail of said Walter Brashear.

To the second interrogatory he answered and said: I have no copy of or accurate recollection of any account being delivered to Mr. West, but James Latimer: believe an account was delivered to Mr. West, or Mr. Nixon, and that the balance due to Mr. Brashear on my books was $4,985 35 on the first day of August, 1811: statements have been delivered, but I have no particular recollection. I have annexed a copy of my account with Walter Brashear, as appearing on my books in August, 1811.

To the third interrogatory he answered and saith: I made a general assignment of all my property whatsoever, in trust for my creditors, on or about the 27th day of August, 1811, which is of record in the recorder's office for Philadelphia county.

To the fourth interrogatory he answered and said: An attachment was laid on the seventh day of April, 1809, by the sheriff of the city and county of Philadelphia, at the suit of the assignees of Francis West, on all goods, wares, and merchandise, rights, moneys, credits, and effects, belonging to Walter Brashear, in my hands, by leaving a copy of the said attachment with me, after said attachment was laid, a similar attachment was laid on the same property at the suit of the executors of John Nixon, deceased. Each of the writs were writs of foreign attachment. The second was served on me in 1809, after the first, but cannot now recollect the particular time when. My circumstances did materially change by severe adversity between the time of serving those attachments, and the date of my general assignment.

To the fifth interrogatory he answered and said: The executors of John Nixon have taken out a scire facias against me at their suit. It issued from the district court of the city and county of Philadelphia, returnable to September term, 1811, No. 54; and I made my general assignment before the

return day of the scire facias. With respect to the attachment at the suit of the assignees of Francis West, I do not know whether any farther proceedings were had in relation to it after it was served on me; if any, they are a matter of record. Subsequently to the execution of my general assignment in August, 1811, to wit, in 1812, I took the benefit of the insolvent law for the city and county of Philadelphia, and was duly discharged thereby. From the date of my general assignment in 1811, up to this date, I have had no property which I considered liable to an execution for my contracted debts previous to my discharge under the said insolvent law. This law I considered as having discharged both my person and effects from all previous liability. Since the war, I have paid off some debts voluntarily, debts which I considered particularly obligatory in point of honor. No creditor ever issued an execution against me.

To the 6th interrogatory he answered and said: When the sheriff laid the attachments in each of the instances before mentioned, he did not require of me any security for the forthcoming of the property; the reason I believe, because the attachment laws of Pennsylvania, in my opinion, do not require the sheriff to take such security. I have, in two other instances, been served with foreign attachments, when no such security was required. The directions on the writs of attachment, in those two last cases, were similar to those issued by the assignees of Francis West, and the executors of John Nixon.

JAMES LATIMER,
PETER LOHRA, *N. P.*

And the said witness having made and subscribed his answers as above set forth, the further proceedings herein were adjourned unto the 5th day of October, A. D. 1822, then to be proceeded in, at the same place. And on the said last mentioned day, at the place aforesaid, the annexed interrogatories were propounded to the witness aforesaid, on behalf of the executors of John Nixon, deceased; but Samuel Shoemaker, Esquire, on behalf of the said Walter Brashear, then and there excepted to and protested against the witness rendering any answer to the same; but the said exception was overruled by me, the said Peter Lohra, whereupon, the said witness, to the several interrogatories propounded on the part of the executors aforesaid, answered and said as follows:

To the 1st interrogatory he answered and said: The attachments were not upon any specified property, but were generally upon whatever property of Dr. Brashear might be in my hands.

To the 2d interrogatory he answered and said: The attachment by Mr. West's assignees was served on the 7th April, 1809, and on the same day I advised Dr. Brashear thereof by mail; but I presume he did not receive this letter before his departure for New Orleans, which, by a letter of 1st May, from Bardstown, Kentucky, he advised me was to take place on the following day; and in this letter he did not acknowledge the receipt of mine of 7th April, but directs me to pay the balance that may remain by the ginseng sales among certain creditors of his in Philadelphia, pro rata. In a letter of the 8th November, 1809, from Bardstown, he informs me that, on his return from Louisville, he was advised of the attachment by Mr. West's assignees, and requests me to settle with Mr. West or his assignees; that he wished the attachment closed with as little expense as possible; but this could not be done, as I had been previously served with an attachment by the executors of Mr. Nixon, which, by an examination of the records, I find was issued on the 7th October, 1809. I do not know whether Doct.

Brashear was informed or knew that the attachments might be dissolved by entering special bail.

To the 3d interrogatory he answered and said: I had been the special bail of Doct. Brashear in a suit wherein Thomas Newman was plaintiff, and had been obliged to pay money, say the amount of debt $5,444 78, interest $166 06, including interest for six months, having paid by my note at six months, with interest, with $369 45 damages on the bills, and costs of suit against principal and against special bail, $31 18; in all $6,011 47; and was remunerated therefor out of the proceeds of the ginseng.

To the 4th interrogatory he answered and said: I do not remember, and cannot say, whether I did or did not inform Doct. Brashear that, if special bail were entered, the attachments would thereby be dissolved; and that, if they were so dissolved, I would pay to him the money which should be found due to him on the settlement of the account.

To the 5th interrogatory he answered and said: The executors of Mr. Nixon, after judgment was obtained on the attachment, did notify me that, in the opinion of their counsel, I might safely pay the money into court, but my counsel thought differently; this was in June, 1811, and before my general assignment.

To the 6th interrogatory he answered and said: I did ship part of the ginseng on my own account, in March, 1809, by brig Growler, for China, before the attachments by Mr. West's assignees or Mr. Nixon's executors were laid; and in May, 1809, shipped the remainder of the ginseng, per ship Delaware, to China, on the joint account of myself and Mr. William Redwood. The results of these shipments were known in the spring of 1810: the former resulted in some profit, the latter in some loss; the profits on the one and the loss on the other nearly balanced.

To the 7th interrogatory he answered and said: Doct. Brashear was not in Philadelphia for a long time after the attachments were laid—I think not before the early part of 1811. I do not remember or know that he proposed to raise the attachments by entering special bail, nor do I remember or know what was the cause that prevented it being so done.

To the 8th interrogatory he answered and said: There was not any collusion, agreement, or consent, between the executors of Mr. Nixon or the executors of Mr. West and myself, that the property or money attached should remain in my hands, should be shipped abroad, or should be used or disposed of in any way, other than the consent of the assignees of Mr. West that the ginseng might be sold; which consent was after their attachment, and before that by Mr. Nixon's executors; nor was there any consent on the part of the said assignees or executors to any delay or procrastination of payment on my part. I had taken to my own account, before the attachments were laid, a considerable part of the ginseng, say nearly two-thirds at least, the fair market price, and advised Doct. Brashear thereof by letter dated the 28th of March, 1809, copy of which is annexed; and had, therefore, the right to ship it without the consent of either the assignees or executors.

To the 9th interrogatory he answered and said: The sheriff, when he served the attachments, or at any other time, was not authorized by law, as I believe, to demand from me, as garnishee, any security for the forthcoming of the property or payment of the money into court; and every thing was done by the sheriff, in the service of the attachments, which, by law, could be done, as far as my knowledge extends.

To the 10th interrogatory he answered and said: I do not remember whether the account current, or one of similar import, was attached to the account sales which were furnished, as I believe, to Mr. Nixon.

JAMES LATIMER.

The foregoing depositions were duly taken and sworn to at the times and places therein stated, which I attest under my notarial firm and seal.

[L. S.] PETER LOHRA, *N. P.*

To the Honorable the Judges of the circuit court of the United States in and for the Kentucky district:

I, Peter Lohra, a notary public of the city of Philadelphia, by lawful authority duly commissioned and sworn, do hereby certify that the execution of this writ appears in the schedule of answers and papers hereto annexed; this I did by virtue of the said writ, cause James Latimer, the witness therein named, to appear before me at such certain days and place appointed by me, and that Charles Chancey, Esquire, then and there appeared on behalf of the executors of John Nixon, deceased, in consequence of the notice having been given to the said executors of the time and place of taking the deposition of the said witness: and I do further certify, that proper proof was made before me that due and legal notice was given to John Lapseley, Samuel Mifflin, and Henry Nixon, of the time and place of taking the deposition aforesaid, as assignees of Francis West, and that they declined attending before me. In testimony whereof, I have hereunto set my hand and notarial seal, the 5th day of October, 1822.

PETER LOHRA, *N. P.*

The deposition of Thomas Anderson, of lawful age, taken at the office of William Macbean, in Lexington, on Saturday, the 23d day of March, 1822, between the hours of ten and one o'clock, agreeably to notice, to be read in evidence in a suit in chancery now depending in the seventh circuit of the United States' circuit court, wherein Walter Brashear is complainant, and Francis West and others are defendants.

Question by complainant. What was the amount paid by Walter Brashear to your father, to yourself, and the heirs of your father, George Anderson, deceased, on account of a claim of your father against Francis West, of Philadelphia?

Answer. We received five thousand and one dollars and sixty-two cents, principal and interest, up to the 1st of March, 1822.

Question by complainant. In what manner did I become indebted to your father, George Anderson, for the above amount?

Answer. I have understood it to be as security for a claim my father had against Francis West, of Philadelphia. And further this deponent saith not.

THO. ANDERSON.

The deposition of William Macbean, taken at the same time and place.

Question by complainant. In whose handwriting is the annexed account current and account of sales, dated 31st March, 1809, headed—"Dr. Walter Brashear in account with James Latimer Cr.,"—on which there appears to be a balance of four thousand and twenty dollars and eight cents, exclusive of interest, due to Walter Brashear?

Answer. In the handwriting of Francis West, of Philadelphia. I have seen him write, and am well acquainted with his handwriting.

Question by complainant. Do you or do you not know the signature of the two following notes to he in the handwriting of Francis West, of Phila-

delphia, one dated 19th March, 1807, at three months after date, payable to Walter Brashear, for $1,887 65; the other of same day and year, at four months, for $1,887 65?

Answer. I have no doubt they are both of the handwriting of Francis West. And further this deponent saith not. W. MACBEAN.

The deposition of John Fowler, of lawful age, taken at the same time and place.

Question by complainant. Are you acquainted with the handwriting of Francis West, of Philadelphia? and is the annexed account current and account sales, dated 31st March, 1809, in his handwriting, marked No. 2?

Answer. I have corresponded with Mr. West for many years, and consider myself well acquainted with his handwriting, and have no doubt the annexed No. 2 account is stated in his own handwriting.

Question by complainant. Are the signatures to the two notes annexed in the handwriting of Francis West?

Answer. I have no doubt they are. And further this deponent saith not.

JOHN FOWLER.

FAYETTE COUNTY, sct.

The foregoing depositions of Thomas Anderson, William Macbean, and John Fowler, was this day taken, subscribed, and sworn to before me, a justice of the peace in for the county aforesaid.

Given under my hand, this 23d day of March, 1822.

MATTHEW ELDER, *J. P. F. C.*

Sales of ginseng on account of Mr. Walter Brashear.

1809.				
March 31.	James Latimer 6 months credit.			
	received in bbls. and tierces stated and weighed,		N. 7809	
		Do.	N. 4881	
May 10.		Do.	N. 6817	
	57 lbs.	Do.	N. 5747	
			N. 25,253 lbs. at 40 cts.	10,101 20
	717 lbs. clarified ginseng at 50 cts.			358 50
				10,459 70
	Charges.			
	Porterage to store, turning out and weighing, $7 50			
	Weighing, 2 cents per cwt. - -		4 50——	12 00
			Nett proceeds,	$10,447 70

Three months after date I promise to pay to the order of Walter Brashear eighteen hundred and eighty-seven dollars sixty-five cents without defalcation, for value received. Philadelphia, 19th March, 1807.

$1,887 65. FRAN. WEST.

Four months after date I promise to pay to the order of Walter Brashear eighteen hundred and eighty-seven dollars sixty-five cents, without defalcation, for value received. Philadelphia, 19th March, 1807.

$1887 65. FRAN. WEST.

Walter Brashear in account with James Latimer.

Dr.			Cr.	
1809.				
Jan. 17	To cash paid carriage of ginseng from Pittsburg -	$77 59	By 19 bbls. ginseng, 1497 lbs.	
21	To cash paid costs of suit - - - -	31 18	nett, 30 cts. - -	$449 10
	To cash paid carriage of ginseng from Pittsburg -	53 82	By proceeds of sales of ginseng	
31	Do. do. do. do. - -	87 92	annexed - - -	10,447 70
	To my note 5th January, 1809, at 6 mos. for 3672 78			
	Do. do. do. do. 1938 06			
		5610 84		
Feb. 2	To cash paid carriage of ginseng - - 49 07			
	Do. do. do. - 123 82			
		172 89		
Mar. 18	To cash paid Guy Bryan on account ginseng - -	223 33		
Apr. 13	Do. do. do. - -	130 00		
May 6	To damage on your bills - - - -	369 45		
	To freight of 57 bbls. of ginseng from New Orleans -	119 70		
	[Exclusive of interest.]	$6,876 72		$10,896 80

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UNITED STATES OF AMERICA, } *sct.*
Seventh Circuit, Kentucky district, }

I, John H. Hanna, clerk of the seventh circuit court of the United States of America in and for the district of Kentucky, do hereby certify that the foregoing papers contain a full, true, and complete transcript of the record and proceedings had in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this twenty-second day of September, in the year of our Lord one thousand eight hundred and twenty-eight, and in the fifty-third year of the independence of the United States of America.

[L. S.] JOHN H. HANNA.

IN THE SUPREME COURT OF THE UNITED STATES.

WALTER BRASHEAR, *appellant,* } *From the seventh circuit, and Kentucky district.*
vs.
FRANCIS WEST, &c., *appellees.* }

The counsel for the appellants suggests to the court that there is a diminution in the transcript of the record certified into this court from the circuit court, in this, that there is no decree in the transcript, whereas, in truth and in fact, there was a decree, which is enrolled in the said circuit court in and for the seventh circuit and Kentucky district.

A certiorari is therefore prayed, &c., directed, &c., commanding, &c.

BIBB, *for appellant.*

No. 67.—UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Honorable the Judges of the circuit court of the United States for the district of Kentucky, greeting:

Whereas, in a certain suit in the said circuit court, wherein Walter Brashear was complainant, and Francis West and others were defendants, which suit was removed to the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit, "that there is no decree in the said transcript, whereas, in truth and in fact, there was a decree, which is enrolled in the said circuit court in and for the seventh circuit and Kentucky district;" you, therefore, are hereby commanded, that, searching the record and proceedings in said cause, you forthwith certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court, on the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-one. Witness the Honorable John Marshall, Chief Justice of said Supreme Court, the second Monday in January, in the year of our Lord eighteen hundred and thirty.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.